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Gets Job Back Plus $10,000 Back Pay

ST. LOUIS — Dennie W. Gordon, dismissed five years ago from his post as auditor in the Army Finance Center here because he had attended a Henry Wallace-Paul Robeson rally, was reinstated by the Federal Civil Service Commission last week. He was also awarded $10,000 plus in back pay.

ACL Judgment

Widow Wins $50,000

MIAMI, Fla.—The accidental death of well-known Melvin A. Jenkins, a Miamian who was one of the victims of a train accident last April, has brought $50,000 to his bereaved widow, Mrs. Marjorie D. Jenkins, Miami school teacher.

The court settlement was made here last week with the approval of County Judge Frank B. Dowling.

Jenkins, an Atlantic Coast Railroad waiter, was on duty on April 20 when the train derailment took place at Dillon, S. C.

Pharmacy Sued; School Teacher Awarded Verdict

Auburn Druggists To Appeal Action Of Fulton Court

A Fulton Superior Court jury awarded a white school teacher $6,000 damages yesterday for injuries and pecuniary loss she allegedly suffered in an accident with a Yates and Milton jeep on October 29, 1951.

Mrs. Sarah Lawrence had asked for $50,000. The verdict yesterday upped to $144,920 damages assessed against Yates and Milton for the accident. Mrs. Myrtice B. Hudson received $138,920 on September 19, 1952 for the death of her daughter in the same accident.

Mrs. Lawrence was driving the vehicle which collided with the Yates and Milton jeep at Glenn and Pulliam Streets. Mrs. Hudson and her daughter were passengers in the car.

Attorneys for Yates and Milton have filed a motion for a new trial in the Hudson case. It is scheduled to be heard Friday, February 13.

Mrs. Lawrence charged that she was knocked from her car into the street by the impact of the collision. The school teacher alleged that she suffered a brain concussion and various bodily injuries.

She asked $50,000 for the "permanent" shock to her nervous system, hospital bills, damages to her car and loss of earnings as a school teacher. The jury, however, awarded her $6,000.

The woman averred that the delivery truck driver's "negligence" was the proximate cause of her injuries. She set up that the driver was operating the delivery truck "too fast," and outlined that he failed to reduce his speed or grant her the right of way.

Attorneys for Yates and Milton denied this and contended that the delivery truck stopped at the intersection and started off again at a speed of from ten to fifteen miles an hour.

Mrs. Hudson had charged that her daughter, Miss Betty George Hudson, died as a result of injuries received in the collision.

Clayton R. Yates and L. D. Milton are partners in the well-known Atlanta drug store chain.

State Supreme Court
White School doors closed
to Creole 9 year old boy

Mobile County white school is upheld in barring Creole child

MONTGOMERY, Ala., March 27 —(AP)—Mobile County school officials had authority to close the doors of a white school to a 9-year-old boy living in a Creole community, the State Supreme Court held yesterday.

Under the state's segregation laws, said Justice Thomas S. Lawson, school authorities are required to provide separate schools for "colored children" and "no child with an appreciable admixture of Negro blood shall be admitted to a public school for white children."

The child, Henry Chestang, was enrolled at the Satsuma Elementary School near Mobile and attended class about three weeks until protests were made to the County School Board.

HIS PARENTS, Mr. and Mrs. Michael S. Chestang, filed suit in October, 1950, asking for a court order requiring the county superintendent to permit their son to attend the school.

In February, 1952, Circuit Judge Claude A. Grayson dismissed their petition and threw the case out.

The state contended that the boy was not entitled to attend the all-white school because of racial extraction on the father's side.

During the lower court hearing, the father testified that his family was of mixed French and Spanish descent, with no Negro blood. He told the court that his father served in the Confederate Army and that his mother was also of French and Spanish ancestry.

Justice Lawson said the burden was on the parents to show that their child was entitled to attend a white school.

He added that the lower court was not wrong in permitting the state to show that locally the word "Creole" is applied to a mixed race in which Negro blood is present.

THE LOWER COURT agreed with a contention of school officials that the boy was not a white child within the meaning of the Alabama Constitution and under state statutes.

"Without elaborating upon this public policy as applied to the association of children in their school life," wrote Justice Lawson, "we conclude that provisions for separate schools for 'colored children' contemplates that no child with an appreciable admixture of Negro blood shall be admitted to a public school for white children."

MOBILE CAN CURB 'CREOLE'

Alabama High Court Backs City Definition in School Case

MONTGOMERY, Ala., March 27 (UP)—The Alabama Supreme Court held today that a 7-year-old boy of "Creole" descent cannot attend a white school in Mobile because "Creole," in Mobile, means "part Negro."

While dictionaries give a wide range of definitions, the word "Creole" generally is applied to early Louisiana settlers of pure French or Spanish descent.

The lower court rejected the request of Michael S. Chestang for a writ of mandamus to force the Mobile Board of Education to readmit his son, Michael, Jr., to an elementary school for white children.

Mr. Chestang testified that he had attended white churches and had associated with white persons all his life, but that his son had been dismissed from school because of protests by other parents.

The Supreme Court observed that the case "presents a most unfortunate and pathetic situation," but ruled that the lower court made no reversable error.

Court Rules Child Is Too Colored For White School

MONTGOMERY, Ala. (ANP) —Despite claims of parents that their child is not a Negro, the Alabama Supreme Court last week ruled his presence in a white school here violated the state's segregation laws.

Mr. and Mrs. Michael S. Chestang, parents of nine year old Henry Chestang, lost their fight to have their child attend Satsuma elementary school.

THE COURT RULED that the child was sufficiently colored to allow Mobile County school authorities to deny him entrance to the school. Under the state's segregation laws, Justice Thomas S. Lawson said, authorities are required to provide separate schools for "colored children," and "no child with an appreciable mixture of Negro blood shall be admitted to a public school for white children."

The child had been enrolled at Satsuma and attended classes for about three weeks until protests were made to the county school board. The state contended the boy was not entitled to attend the school because of his racial background.

* * *

HOWEVER, DURING a lower court hearing, the father testified his family was of mixed French and Spanish descent with no Negro blood. He told the court his father served in the Confederate Army and his mother also was of French and Spanish ancestry.

Persons with a racial mixture of this sort and living in America are referred to as Creoles. The term, however, has been corrupted to refer to Negroes who are mulattos—a mixture of Negro and white blood.

The case was thrown out of the lower court, and Mr. and Mrs. Chestang appealed to the State Supreme Court. This resulted in the decision rendered last week.

Pot Of Coffee Worth $3,000 To Customer

SACRAMENTO, Calif.—(ANP)—Anne Clark of San Francisco told a jury in Sacramento Superior Court this week that she went into a restaurant here and ordered one pork chop, one egg and some hominy grits.

The waitress, (Donna Dennis) Mrs. Clark testified, brought her two pork chops, two eggs and some fried potatoes. When she protested, Mrs. Clark said the waitress served her a pot of scalding coffee —right on top of her head— the whole pot.

The jury awarded Mrs. Clark $3,000 damages for her pains.

The restaurant is operated under the name of Staggs, and it is owned by Palmer Pinkney.

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An Antisegregation Meeting Recently In South Carolina Presented A Paradox

By ALFRED MAUND

COLUMBIA, S. C., presented something of a paradox the last three days of 1952:

South Carolina has empowered Governor James F. Byrnes to abolish the State's public-school system if the United States Supreme Court rules out segregation of Negro and white children in the nation's schools.

But Columbia, the State capital, received most cordially 138 young people, both white and Negro, from 17 Southern and border states who gathered at Allen University to discuss racial segregation in the public schools.

The conference was sponsored by nearly 500 outstanding persons in virtually all fields in the South —18 from Kentucky— and coordinated by the Southern Conference Educational Fund, an antidiscrimination organization with headquarters in New Orleans.

Resolution Adopted

The young people adopted a resolution addressed to the President of the United States, the U. S. Attorney General and Governors of states where segregation is enforced by law. It said, in part:

"Whereas, there are before the Supreme Court of the United States cases involving the constitutionality of enforced segregation . . . and the decision rendered by the court will have great bearing upon the very existence of democracy within the boundaries of the United States . . . Whereas, as youth will be vitally affected by this decision, and whereas equal opportunities which are fundamental to a democratic society cannot exist in a segregated system, we . . . do hereby petition that you act immediately to eliminate segregation in education."

The resolution was prepared and submitted by a panel headed by Miss Patricia Smathers, a student at Kentucky's Berea College.

Other delegates from Kentucky were Miss Rosemary Gleason, Louisville, representing the Young Churchmen of the Episcopal Diocese of Kentucky; Miss Jessie Reason, another Berea student; David D. McMullins, student at the College of The Bible, Lexington, and Kenneth Darnell, University of Kentucky student.

Conference discussions centered on the betterment of racial relations in the school, the home, the church and industry.

Speakers included Dr. William Marshall, president of Wayland Baptist College, Plainview, Tex.; Dean James P. Hupp, West Virginia Wesleyan College; Aubrey Williams, Alabama publisher and president of the Southern Conference Educational Fund, and Dr. Herman A. Long, director of the department of racial relations at Fisk University.

Significant Decision

LAST week's decision of the United States Supreme Court upholding the constitutionality of Virginia's law banning the closed shop and all peaceful picketing conflicting with it, has wide implications for Negro labor in all states having similar legislation.

Virginia's Right to Work Law holds that denial of work on account of membership or non-membership in a labor union is contrary to public policy, and provides damages for violation.

A. F. L. building trades unions (many of them discriminate against Negro labor) picketed a construction job where some non-union labor was being used by a plumbing subcontractor.

The picketing was peaceful and only two pickets at a time were used, but because of it union members on the job refused to continue to work there.

Picketing stopped when an injunction was handed down against the unions by a Richmond court which also awarded damages of $190 to the contractor.

Where Negroes are denied membership in a union which controls employment because of closed shop agreements, they are clearly being denied the right to work, and there is little they can do about it unless the state (as in the case of Virginia) has outlawed the closed shop.

Even if Negroes had their own plumbing union, it would scarcely be able to win over the larger and more powerful white union already possessing bargaining rights; and of course the same holds true in the case of, say, an electricians' union, few of which permit Negro membership.

The much-maligned Taft-Hartley Law somewhat ameliorates similar situations by enabling an employer to hire a non-union worker who nevertheless is represented by the union, but because of the power of organized labor this law has not been strictly enforced where it has been enforced at all.

While there are nearly a million and a half Negro members of labor organizations, it is still an undeniable fact that Negro segregation, exclusion and discrimination have not been eliminated from the labor movement; and until those biased unions clean house and observe democratic processes, they can expect more laws like that of Virginia, and more decisions like that of the U. S. Supreme Court.

While leading labor spokesmen have been vociferously denouncing the Taft-Hartley Law and any other curbs on monopolistic labor practices, it is noteworthy that they have been fare less concerned about the enactment of fair employment practices laws either state or federal, giving mostly lip service support to such legislation.

Some of the more far-sighted labor leaders have seen the wisdom of actively backing the fight for FEPC, realizing that white labor cannot remain free while black labor is enchained, but there are still not enough of them.

Business and industrial leaders are similarly short-sighted in refusing to come to grips with this issue in an increasingly urbanized industrial economy where skilled workers are growing scarcer.

The continuing color bar in industry and commerce, whether enforced by business or unions, is a luxury which America at this critical time in its history cannot afford, and which democratic justice must compel us to abolish.

Dixie Trends—

SOUTH GIRDS ITSELF FOR SCHOOLS RULING

Leaders Doubt If High Court Will Halt Segregation

LAY PLANS FOR EQUALITY

By JOHN R. HENRY

(International News Service Writer

ATLANTA, April 11. — Southern leaders privately doubt today that the Supreme Court will abolish racial segregation in schools.

They are preparing for just such a step. It would come as a surprise, nevertheless, to such men as Governor Herman Talmadge and James F. Byrnes.

Legislatures of at least four states are on virtual stand-by alert, awaiting the verdict of the high tribunal.

Planned Legislation

Lawmakers in Georgia and South Carolina, particularly, have planned legislation. These proposals are designed in effect to preserve segregation regardless of a Court decision to the contrary.

Governors John S. Battle of Virginia and Hugh White of Mississippi have indicated they will summon Legislatures of their states to special session if the top court outlaws separation of the races.

In Atlanta, the Southern Regional Council urges caution. George Mitchell, executive secretary of the political equal-opportunity

Essential Question

Essential question at stake in cases from Clarendon County, South Carolina and Prince Edward County in Virginia is this: Were lower courts correct in their decisions that Negroes if they wish can force white pupils to attend schools with Negroes?

Other cases came to the top court from Topeka, Kan., Wilmington, Del., and the District of Columbia. They mainly involve bloodshed that would result from segregation. the sudden end of segregation, expressed personal doubt the court of Colored would attempt an anti-segregation

ruling. Mr. Talmadge feels this way:

"In addition to the precedent of law, the court surely will consider other consequences of such a decision. I can't imagine that the justices would be so improvident as to hand down such a decision."

See System Destroyed

Virginia's attorney general, J. Lindsay Almond, said an anti-segregation decision would virtually destroy the public school system because taxpayers would not provide revenue for so-called "mixed schools."

That also seems to be the epitome of plans in South Carolina and Georgia.

Mr. Talmadge predicted the common school system would be abolished in five days and the schools turned over to private individuals. The state would hand over to each family with children sufficient funds to cover the pupil's tuition in the privately-operated schools.

He made clear that such money would be given by the state to Negro as well as white families.

Other states apparently are studying similar procedures.

The way things seem to stand now indicates the Governors aren't exactly expecting trouble but they're ready for it.

A Backward Step

A Supreme Court decision ending segregated schools would affect only 10 cities in Kansas. Only in these cities with populations above 25,000 are children separated according to race.

It appears now that school officials there are resigned to such a decision. A joint meeting of the 10 boards of education was held secretly in Topeka recently.

Discussed was what to do with the 237 colored teachers, who now instruct 7,521 colored pupils. Thus far no colored teacher in Kansas has ever been assigned to teach a mixed class.

At the meeting a decision was reached not to break this tradition. More alarming was an agreement that colored teachers must be "weeded out" of an otherwise intergrated system.

This is a backward step. It is a step completely out of harmony with a rapidly growing trend toward integration not only in the classroom but in faculty appointments as well.

Kansas need look no further than nearby Illinois to see the pattern of the future. Illinois recently abandoned all segregated schools, but there was no suggestion that any competent teacher be discharged because of his or her color.

Then there's the report from New Jersey. Back in 1946 when the state began abolishing segregated schools, 415 colored teachers were employed. Under the completely integrated system 425 are employed.

Arizona which just this year abandoned segregated schools mixed its teaching staffs at the same time it mixed its pupils.

The question arises: if Illinois, New Jersey and Arizona can do it, why not Kansas?

Surely enough of the spirit of John Brown survives in this great prairie state to stave off this undemocratic purge of badly needed, competent teachers.

Yellow Jury Slips Discriminatory, Court Says

Small Chapter Fights On Subscribed Funds

By International News Service

WASHINGTON — The Supreme Court reversed Monday the conviction of a Georgia Negro who was sentenced to death for rape on grounds he was the victim of racial discrimination in his trial.

By a unanimous 8-0 vote, with Justice Jackson taking no part in the case, the court set free James Avery of Walker County, Ga., who challenged the state's selection methods.

Speaking for the tribunal, Chief Justice Vinson lashed out at the state's practice of placing the names of Negro jury candidates on yellow slips of paper and white jurors on white tickets before selections are made.

VINSON POINTED out that not a single Negro was on the jury that convicted Avery and declared that the state failed to prove there was no discrimination in its methods of selecting jurors.

He said "Even if the white and yellow tickets were drawn from the box without discrimination, opportunity was available to resort to it at other stages in the selection process.

"And, in view of the case before us, where not a single Negro was selected to serve on a panel of 60, though many were available, we think that petitioner (Avery) has certainly established a prima facie case of discrimination."

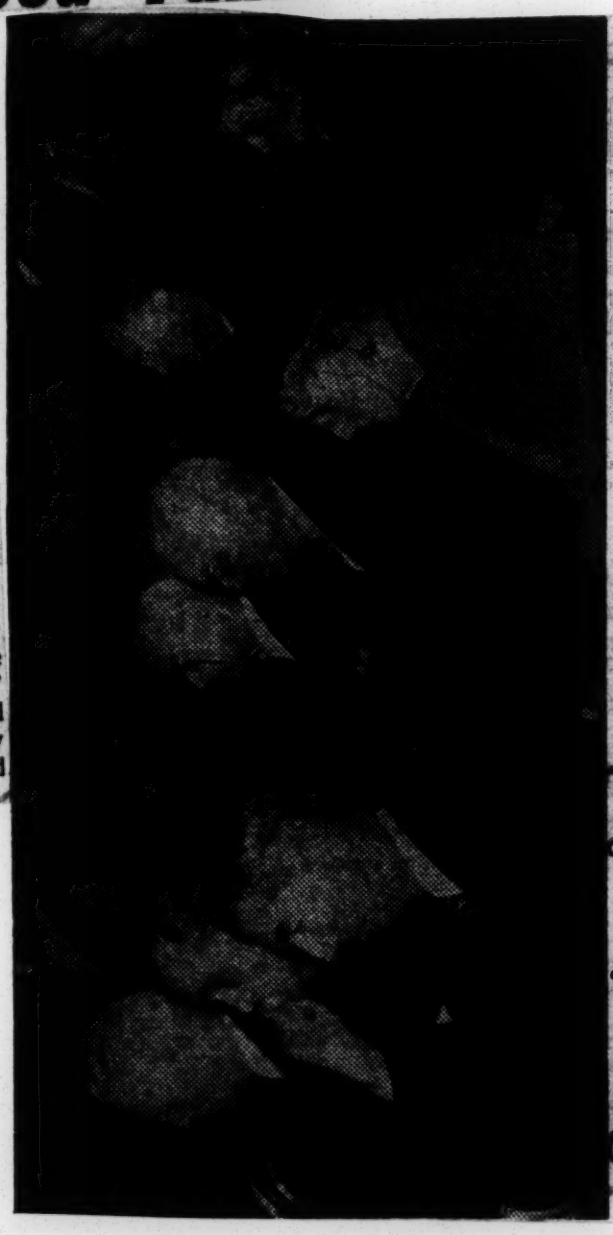
EL CENTRO, Calif. — Mrs. Jimmie L. Smith was awarded $100 damages in Superior court here recently on a complaint that she was discriminated against by Troy's Cafe and Waffle shop.

The suit was handled by the Imperial Valley chapter of the NAACP. Judge Elmer Heald handed down the decision.

A lower court had dismissed the suit against Troy Hamilton, owner of the cafe, on grounds Hamilton was not present when his employes refused to serve Mrs. Smith.

Lucian James, president of the NAACP chapter said: "The money involved is not very important. But we feel that when our boys, colored as well as white, are fighting and dying overseas for their country, they should at least be able to eat in public restaurants."

James said money for court and attorneys fees was subscribed by the chapter's 75 members and friends.



Justices Mourn — A majority of the members of the United States Supreme Court were present at funeral services held for Harry N. Parker, 74, court messenger, who died after thirty-nine years of service. Pictured at the rites in Washington's St. Augustine's Catholic Church were, left to right: Chief Justice Earl Warren, Justice Sherman Minton, Justice Thomas Clark. Second row (from left) Justice Felix Frankfurter, Justice Harold Burton and Mrs. Harold Burton. Third row (from left) Justice Robert Jackson and Mrs. Jackson.—INS Photo.

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CRIME

Supreme Court Rejects Murder Pleas

The Supreme Court rejected Monday the appeals of two men convicted of separate slayings in Pittsburgh, Pa., and North, S. C.

They were Cleveland Thompson, convicted of the Sept. 13, 1949, shooting of bartender Wallace Russell in Pittsburgh speakeasy, and Calause Livinkston, Negro tenant farmer, who was sentenced to the electric chair for the murder of Tom Cartin, a white man, at North, S. C., in April, 1952.

New Trial Ordered for Negro Given Death by White Jury

The Supreme Court yesterday reversed the conviction of a man sentenced to die for criminal attack after trial before an all-white eGorgia jury chosen by a procedure which made possible illegal discrimination against Negroes.

Saved by the 8-to-0 vote of the Supreme Court was James Avery, a Fulton County (Ga.) Negro, who contended that the selection of the jury was in violation of the Equal Protection Clause of the Fourteenth Amendment.

The jury panel of 60 persons was chosen by the trial judge, who picked the names of prospective talesmen from a box containing white and yellow cards. White presons' names were printed on the white tickets. Negroes' names appeared on the yellow ones.

White Panel Selected

After this procedure, the entire panel selected was composed of whites, although 5 percent of the names in the box were Negroes.

In announcing the opinion, Chief Justice Fred M. Vinson stated:

"Obviously, that practice makes it easier for those to discriminate who are in a mind to discriminate. Further, the practice has no authorization in the Georgia statutes . . ."

Vinson said that Avery "certainly established a prima facie case of discrimination" which the State of Georgia did not dispell.

In a separate concurring opinion, Justice Felix Frankfurter said:

"The start resulting phenomenon here was that somehow or other, despite the fact that over 5 percent of the slips were yellow, no Negro got onto the panel of 60 jurors from which Avery's jury was selected. The mind of justice, not merely its eyes, would have to be blind to attribute such an occurrence to mere fortuity."

Charge Not Proven

In another decision, the Supreme Court voted 5 to 4 that the Government had not proven a charge that the "unit advertising" system of the New Orleans Times-Picayune Publishing Co. was in violation of anti-trust laws.

Under the system, potential national and classified advertisers were compelled to purchase space in morning and evening newspapers of the company in order to get any space in either.

Justice Tom C. Clark, in announcing the majority opinion, noted that the system used by The Times-Picayune did not close the advertising market, which remained open both in a competing newspaper as well as radio, television and national magazines.

Declaring that there was no "evil intent" on the part of The Times-Picayune, Justice Clard added that the case records fail to show "that the publishing company's advertising contracts unduly handicapped its extant competitor The Item."

Other Actions Listed

In other cases, the court:

1. Agreed to review cases involving calidity of organized baseball's "reserve clause" binding players to certain clubs.

2. Ruled that foreign seamen shipping out of United States ports on foreign vessels must use foreign law to collect damages for injuries incurred while at sea.

3. Dismissed the Governernment's anti-trust injunction suit against six firms with interlocking directorates. The high court said the trial court did not abuse its discretion in denyin the Government an injunction.

4. Dismissed a challenge to a California law making all public employes subject to a loyalty oath as "civil defense workers." The Supreme Court said there was no "substantial Federal question" presented by the case.

The Supreme Court announced it will adjourn on June 15 for its summer recess. It still has pending a number of cases, including issues of the legality of racial segregation in the public schools and the validity of a District of Columbia law forbidding exclusion of Negroes from restaurants.

Supreme Court Decision Holds Ga. Jury Picking System Discriminatory

(By The (NNPA)

White and yellow slips used to distinguish between white and colored prospective jurors in the selection of trial juries constitutes a prima facie case of racial discrimination in violation of the "equal protection" clause of the 14th amendment, the U.S. Supreme Court ruled Monday.

In an unanimous decision, the court reversed the Georgia Supreme Court which had upheld the conviction of James Avery on a charge of attacking Mrs. M. L. Hollingsworth, a white woman, in Walker County, Ga.

Three opinions were written in the case. Chief Justice Fred M. Vinson delivered the opinion of the court, in which it was held that the State of Georgia had failed to overcome the prima facie case of discrimination made out by the facts in the case.

Concurring opinions were written by Justice Felix Frankfurter and Justice Stanley F. Reed. Justice Hugo Black concurred in the result but did not state his separate views. Justice Robert H. Jackson, who was ill, took no part in the consideration or decision of the case.

In Fulton County

The method of jury selection condemned by the decision was that used in Fulton County (Atlanta), Ga., where Avery was tried.

The alleged attack, of which he was convicted, occurred Oct. 2, 1950. Avery was arrested that evening and lodged in the jail at LaFayette, the seat of Walker County.

A motion was made for removal of the trial from Walker County on the ground that there might be a lynching. It was overruled. But the Georgia Court of Appeals reversed this ruling, and the trial was transferred to Atlanta.

Avery challenged the panel of jurors selected to try his case. He charged that racial discrimination had been practiced in the selection of the jury. The Fulton County Superior Court overruled his motion.

Had Colored Tickets

The Board of Jury Commissioners, in making up the jury list, selected the names of prospective jurors from the county tax returns and printed the names of white persons on white tickets and the names of colored persons on yellow tickets.

These white and yellow tickets were then placed in a jury box. A Superior Court judge then drew a number of tickets from the box. These tickets were handed to a sheriff, who gave them to a clerk to make up the list of persons to be called to serve on the panel.

Approximately 60 persons were selected for the jury panel in the Avery case. The judge who picked out the tickets testified that he did not, nor had he ever practiced discrimination in any way, in drawing the names from the jury box.

Noting there was no contrary evidence, Chief Justice Vinson said:

Absent From Panel

"Yet the fact remains that there was not a single colored person in that panel. The State concedes that colored persons are available for jury service in Fulton County, and we are told that colored persons generally do serve on juries in the courts of that county.

Justice Vinson noted that the practice of using white and yellow tickets "makes it easier for those to discriminate who are of a mind to discriminate."

He also noted that the use of such tickets is not authorized by Georgia law, and that the Georgia Supreme Court, in upholding Avery's conviction, expressed disapproval of the use of separately colored tickets in Fulton County, saying that it constituted "prima facie evidence of discrimination."

The Chief Justice pointed out that the Georgia Supreme Court affirmed Avery's conviction because Avery had filed to prove "some particular act of discrimination by some particular officer responsbile for the selection of the jury," and that the State had argued it was Avery's "burden to fill this 'factual vacuum."

High Court Disagrees

The Supreme Court disagreed with this line of argument. "If there is a 'vacuum," said Chief Justice Vinson, "it is one which the state must fill. ' oving in with sufficient evi o dispel the prima facie ca discrimination."

He added that "when a prima facie case of discrimination is presented, the burden falls, forth with, upon the state to overcome it. The state failed to meet this test."

In his concurring opinion, Justice Frankfurter directed attention to the testimony from a recent member of the Fulton County Board of Jury Commissioners that the use of white and yellow slips "was designed for purposes of racial discrimination, and it has not been shown that they could serve any other purpose."

"The stark resulting phenomenon here was that somehow or other, despite the fact that over 5 per cent of the slips were yellow, no colored persons got onto the panel of 60 jurors from which Avery's jury was selected," said Justice Frankfurter, adding:

Cites Blind Justice

"The mind of justice, not merely its eyes, would have to be blind to attribute such an occurrence to mere fortuity."

In his concurring opinion Justice Reed pointed out that the population of Fulton County is 691,707, of which col opeoerpedl comprise 25 percent or 165,814 and that the tax receiver's digest, from which the jury list is selected, has 105,035, white citizens and 17,736 colored citizens —14 percent.

Noting that the panel of 60, from which the trial jury for Avery was selected, was all white, Justice Reed said: "these facts establish a prima facie case of discrimination which the record does not rebut."

'White Only' Signs Come Down in Capital Cafes

By ED CREAGH

WASHINGTON, June 9 (AP)—The color line vanished in restaurants order of the Supreme Court. But with hard-to-find exceptions, white and Negro residents continued to eat and drink apart.

The high court yesterday, by an requiring that "any well-behaved and respectable person" be served in "any licensed restaurant, eating house, bar room, ice cream saloon or soda fountain" in the District of Columbia.

District officials promptly announced the long-ruled law would be enforced beginning tomorrow. Most restaurants beat the deadline by scrapping their "White Only" policy at once. A spot check showed, however, almost no Negroes asked for service in restaurants where formerly they were unwelcome.

CRUSADER'S TOUR

One exception was Edgar Brown, bearded veteran Negro crusader for equal rights. Brown made a tour of Thompson's Restaurants, the chain involved in the Supreme Court test case, and reported he was served courteously in every one.

At the peak of today's lunch hour rush there was not a single Negro patron in the 14th Street Thompson's Cafeteria where two Negroes were refused service three years ago, thus precipitating the court fight which led to yesterday's decision.

This didn't surprise the heads of local Negro organizations, who welcomed the Supreme Court action as a step toward equality of races but doubted there would be any great change in the immediate segregation pattern.

FEW CAN AFFORD

Belford Lawson, Jr., president of the District Chamber of Commerce, a Negro orgaation, told a reporter very few Negroes can afford to patronize downtown restaurants, although some eat in drugstore and five-and-ten cafeterias which voluntarily have lowered racial bars in recent years.

The head of the local branch of the National Association for the Advancement of Colored People, Eugene Davis, commented:

"Many people who read about this thing have visions of men in overalls coming in and sitting beside them. But they'll soon see that we have people of culture and education and decency just as the white race has. And once they see that the battle is won."

Of the approximately 2,000 restaurants in Washington, more than 1,750 have barred Negro customers in the past. Any that do so hereafter will be risking a $100 fine and a revocation of their license for at least a year.

High Court's Ruling Aids Battle for Home Rule

Thompson Case Opinion Agrees Municipal Power May Be Delegated

By Joseph Paull
Post Reporter

It is unlawful for Washington restaurants to deny service to Negroes, the Supreme Court ruled yesterday.

In its opinion deciding the racial - discrimination question, the court also stated that the Constitution "would seem" to give Congress power to grant as much self-government to the District of Columbia as to a territory such as Hawaii or Alaska.

The court voted 8-0 to declare still valid the "lost law" of 1873 which made it criminal for operators of restaurants and similar establishments to refuse equal service to all "well-behaved" and "respectable" persons.

Remanded to the United States Court of Appeals for decision is the question whether an 1872 law, which applied also to hotels, barbershops and bathing houses, is still enforceable or whether it was repealed.

The court's opinion has a double-barrelled impact.

First, at a time when Congress is reluctant to pass new legislation concerning racial relations in the Nation's Capital, the court puts its final stamp of approval on the criminal sanction against exclusion of Negroes from public eating houses.

Second, although the home-rule question was not directly before it for decision, the unanimous court declared in the strongest possible terms that it sees no reason why Congress cannot delegate complete municipal legislative powers to a body elected by the citizens of the District of Columbia.

Proponents of pending home-rule legislation had postponed an immediate fight for it pending a Supreme Court decision on whether a Constitutional amendment is necessary.

According to District authorities, restaurant operators will be given "a day or so" to study the court's ruling. Thereafter, any failing to comply will be prosecuted, the authorities said.

Under terms of the laws, conviction provides for a $100 fine and forfeiture of the business license.

Reaction to the decision was immediate:

Attorney General Herbert Brownell, jr., expressed "gratification" over the decision and said it was a significant forward step toward accomplishment of President Eisenhower's anti-segregation program. Other steps are being considered to end segregation here, he asserted.

Brownell also said the decision "removes all doubts" as to the power of Congress to grant Washingtonians an "effective" voice in self-government.

E. F. Colladay, general counsel for the Washington Board of Trade, said he was "surprised and disappointed" by the decision.

Mrs. Mary Church Terrell, one of the three persons denied service by Thompson, said:

"I will be 90 on the 23d of September and will die happy that children of my group will not grow up thinking they are inferior because they are deprived of rights which children of other racial groups enjoy."

The case decided finally by the Supreme Court began in 1950 when the John R. Thompson Co., Inc., operator of a chain of restaurants here, was accused of refusing to serve a group of Negroes.

Laws Held Invalid

Judge Frank H. Myers threw the case out of Municipal Court before trial, after handing down an opinion holding the 1872-1873 laws to be unConstitutional.

Then, the Municipal Court of Appeals in a two-to-one decision, reversed Judge Myers, and said that while the 1872 law was no longer in effect, the 1873 law remained enforceable.

The case went to the United States Court of Appeals, which reversed the Municipal Court of Appeals by a five-to-four vote. The controlling judges of that court said that the laws either were an improper assumption of power by the now defunct Legislative Assembly or else had been repealed directly or indirectly.

As the case progressed up through the courts, interest in it mounted. Numerous civic and business associations threw their weight on one side of the case or the other.

U. S. Enters Case

The Justice Department decided to enter the litigation on the side of the District government against the Thompson Company. Acting as friend of the court, the Justice Department noted that segregation in Washington was a matter of concern not only to the entire country but on the international scale as well.

On the other side the Washington Board of Trade denounced the atempt at enforcement of the old laws as "repugnant to American standards of fairness."

The Supreme Court agreed to review the case and heard extensive argument. The justices appeared to scoff at the suggestion that the laws were "lost" here for almost 80 years. It was pointed out that the ordnances were available in statute books in regular libraries and in the safe of the Corporation Counsel as well.

The case was taken under advisement by the high tribunal o nMay 1.

Douglas Writes Opinion . . .

Justice William O. Douglas wrote the court's opinion. Justice Robert H. Jackson did not participate in it because he was ill at time of argument.

Justice Douglas traced the District government back to its inception in 1790, but laid stress on the Organic Act of 1871 creating the cunicipal corporation here with a legislative assembly which was in part elected by the local inhabitants.

That act gave the legislative assembly, later dubbed the "featherduster le g i s l a ture," power extending to "all rightful subjects of legislation" with certain exception which the justice said are not material to the case. Congress retained modification, repeal and legislative powers of its own over the District, however.

Justice Douglas noted that the grant of power to the legislative assembly is "substantially identical" with the legislative power granted the territories."

'Home Rule' Decision

He declared:

"The power of Congress to grant self-government to the District of Columbia under . . . the Constitution would seems to be as great as its authority to do so in the case of territories.

"But a majority of the judges of the Court of Appeals held that Congress had the constitutional authority to delegate 'municipal' but not 'general' legislative powers and that the Acts of 1872 and 1873, being in the nature of civil rights legislation fell wtihin the latter group and were for Congress alone to enact."

He pointed out that cases cited by the appellate judges wer inapplicable, and went on to say:

"The power of Congress over the District of Columbia relates not only to 'national power' but to all the powers of legislation which may be exercised by a State in dealing with its affairs . . . There is no reason why a State, if it so chooses, may not grant home rule or self-government to its municipal corporations."

Other Cities Cited

Citing some of the powers granting home rule to cities by their States, Justice Douglas added:

"It would seem then that on the analogy of the delegation to 'all the powers of legislation which may be exercised by a State in dealing with its affairs . . . There is no reason why a State, if it so chooses, may not grant home rule or self-government to its municipal corporations.' and home rule to cities by law making is subservient and State control over the District. law prohibiting discriminations to the District of Columbia as to a territory such as Hawaii or Alaska. The court voted 8-0 to declare still valid the "lost law" of 1873 which made it criminal for operators of restaurants and similar establishments to refuse equal service to all "well-behaved" and "respectable" persons. Remanded to the United States Court of Appeals for decision is the question whether an 1872 law, which applied also to hotels, barbershops and bathing houses, is still enforceable or whether it was repealed. The court's opinion has a double-barrelled impact. First, at a time when Congress is reluctant to pass new legislation concerning racial relations in the Nation's Capital, the court puts its final stamp of approval on the criminal sanction against exclusion of Negroes from public eating houses. Second, although the home-rule question was not directly before it for decision, the unanimous court declared in the strongest possible terms that it sees no reason why Congress cannot delegate complete municipal legislative powers to a body elected by the citizens of the District of Columbia. Proponents of pending home-rule legislation had postponed an immediate fight for it pending a Supreme Court decision on whether a Constitutional amendment is necessary. According to District authorities, restaurant operators will be given "a day or so" to study the court's ruling. Thereafter, any failing to comply will be prosecuted, the authorities said. Under terms of the laws, conviction provides for a $100 fine and forfeiture of the business license. Reaction to the decision was immediate: Attorney General Herbert Brownell, jr., expressed "gratification" over the decision and said it was a significant forward step toward accomplishment of President Eisenhower's anti-segregation program. Other steps are being considered to end segregation here, he asserted. Brownell also said the decision "removes all doubts" as to the power of Congress to grant Washingtonians an "effective" voice in self-government. E. F. Colladay, general counsel for the Washington Board of Trade, said he was "surprised and disappointed" by the decision. Mrs. Mary Church Terrell, one of the three persons denied service by Thompson, said: "I will be 90 on the 23d of September and will die happy that children of my group will not grow up thinking they are inferior because they are deprived of rights which children of other racial groups enjoy." The case decided finally by the Supreme Court began in 1950 when the John R. Thompson Co., Inc., operator of a chain of restaurants here, was accused of refusing to serve a group of Negroes.

Laws Held Invalid

Judge Frank H. Myers threw the case out of Municipal Court before trial, after handing down an opinion holding the 1872-1873 laws to be unConstitutional. Then, the Municipal Court of Appeals in a two-to-one decision, reversed Judge Myers, and said that while the 1872 law was no longer in effect, the 1873 law remained enforceable. The case went to the United States Court of Appeals, which reversed the Municipal Court of Appeals by a five-to-four vote. The controlling judges of that court said that the laws either were an improper assumption of power by the now defunct Legislative Assembly or else had been repealed directly or indirectly. As the case progressed up through the courts, interest in it mounted. Numerous civic and business associations threw their weight on one side of the case or the other.

U. S. Enters Case

The Justice Department decided to enter the litigation on the side of the District government against the Thompson Company. Acting as friend of the court, the Justice Department noted that segregation in Washington was a matter of concern not only to the entire country but on the international scale as well. On the other side the Washington Board of Trade denounced the atempt at enforcement of the old laws as "repugnant to American standards of fairness." The Supreme Court agreed to review the case and heard extensive argument. The justices appeared to scoff at the suggestion that the laws were "lost" here for almost 80 years. It was pointed out that the ordnances were available in statute books in regular libraries and in the safe of the Corporation Counsel as well. The case was taken under advisement by the high tribunal o nMay 1.

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'Home Rule' Decision

He declared: "The power of Congress to grant self-government to the District of Columbia under . . . the Constitution would seems to be as great as its authority to do so in the case of territories. "But a majority of the judges of the Court of Appeals held that Congress had the constitutional authority to delegate 'municipal' but not 'general' legislative powers and that the Acts of 1872 and 1873, being in the nature of civil rights legislation fell wtihin the latter group and were for Congress alone to enact." He pointed out that cases cited by the appellate judges wer inapplicable, and went on to say: "The power of Congress over the District of Columbia relates not only to 'national power' but to all the powers of legislation which may be exercised by a State in dealing with its affairs . . . There is no reason why a State, if it so chooses, may not grant home rule or self-government to its municipal corporations."

Other Cities Cited

Citing some of the powers granting home rule to cities by their States, Justice Douglas added:

and managers of restaurants in the District of Columbia."

The court ruled that the laws of 1872 and 1873 survived "'all subsequent changes" in the government of the District and "remain today a part of the governing body of laws applicable to the District."

Justice Douglas noted neither Congress nor the Commissioners have ever attempted to repeal the ordnances. Likewise, he said, there is nothing in the Code of 1901 which invalidated the laws.

He declared he found it "difficult not to agree" that the 1872 and 1873 laws are "general and permanent" as contrasted to private, special or temporary statutes, but that they remain in force as police regulations relating to municipal affairs.

"The laws which require equal service to all who eat in restaurants in the District are as local in character as laws regulating public health, schools, streets and parks," Justice Douglas said. "Regulation of public eating and drinking establishments in the District has been delegated by Congress to the municipal government from the very beginning."

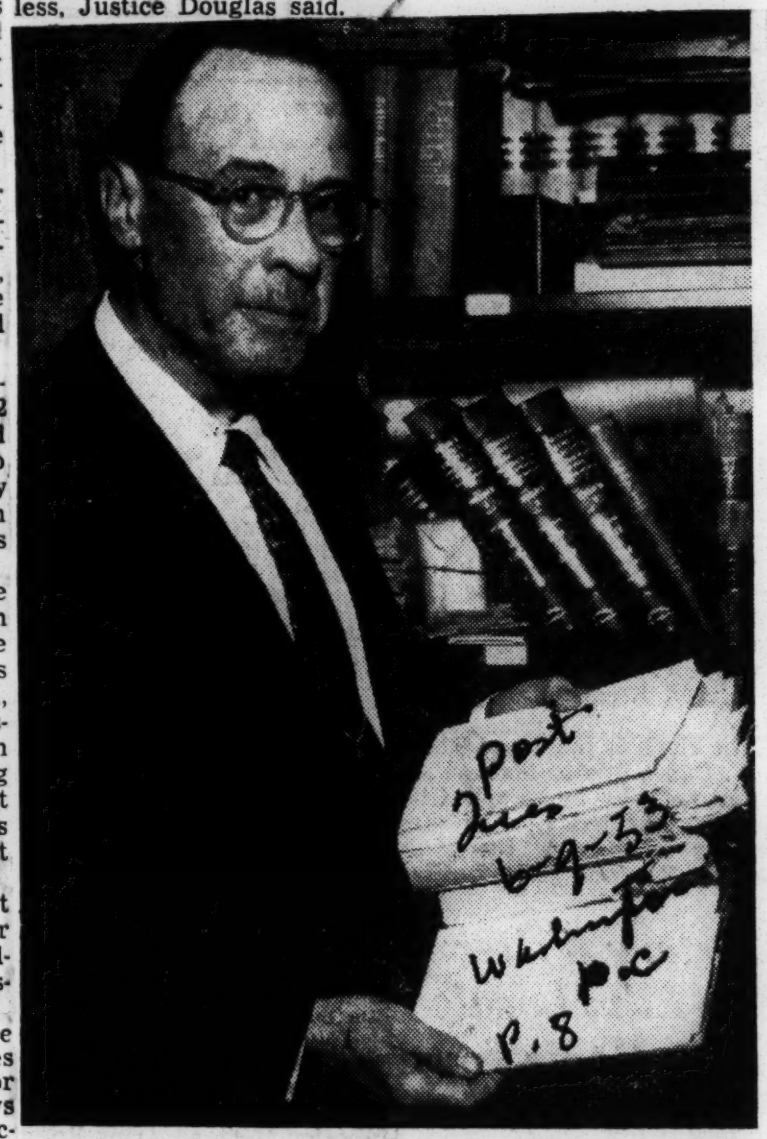
Tackling the contention that the laws were abandoned or repealed by non-use and administrative practice, the justice said:

"The failure of the executive branch to enforce a law does not result in its modification or repeal. . . . The repeal of laws is as much a legislative function as their enactment. . . . The case therefore appears to us no different than one where the executive department neglects or refuses to enforce a requirement long prescribed by the legislature."

Justice Douglas also had a direct answer to Thompson's argument that since the laws remained unused for 75 years, they should be considered dead. The justice said:

"Cases of hardship are put where criminal laws so long in disuse as no longer known to exist are enforced against innocent parties. But that condition does not bear on the continuing validity of the law; it is only an ameliorating factor in enforcement."

He also pointed out that more recent laws enacted by Congress state terms on which licenses may be granted and revoked, while the 1872 and 1873 Acts make mandatory forfeiture of licenses to operate restaurants violating the anti-discrimination law. But the equal-service law also provides for a $100 fine and this part of the penalty remains in force regardless, Justice Douglas said.



By Jack Lartz—The Washington Post

Principal Assistant Corporation Counsel Chester H. Gray holds an old volume containing the "lost laws" of 1872 and 1873 which the Supreme Court declared operative.

What Other Papers Say

Chip Out Of Segregation

(FROM THE NEW YORK HERALD TRIBUNE)

To the layman it may appear that the Supreme Court traveled an extraordinarily long and indirect course in emerging with the decision that restaurants in the District of Columbia must hereafter serve Negroes. But the question before the court was tight and legalistic. The justices had to decide whether an anti-discrimination law passed by the local assembly eighty years ago, back in the days when the people of Washington enjoyed a measure of self government, ever had any validity. And even if Congress properly delegated such legislative authority, had not the law expired by repeal or disuse?

Justice Douglas, speaking for an undivided court, gave the forthright answer that was demanded. He found that the law was proper in the first place, was never repealed, and carries as much force in 1953 as on the day of enactment. All this is rather a roundabout means toward a definite end, as the court was doubtless conscious. What happened was that one conspicuous aspect of racial discrimination in the national capital has been stricken down The principle of home rule won an important victory.

Toward Equal Rights

(FROM THE NEW YORK TIMES)

Although the fact is not generally known, citizens residing in the District of Columbia were at one time considered capable of self-government. A century and a half ago Washington had a locally elected City Council; 133 years ago it was given a popularly elected Mayor; between 1871 and 1878 it was blessed with a territorial government which introduced many public improvements but came to be regarded with suspicion by Congress and was therefore abolished. It was during this stage that the Legislative Assembly, as it was called, passed and repassed an act forbidding "any restaurant keeper or proprietor, proprietors or keepers of ice-cream saloons or places where soda water is kept for sale, or keepers of barberships and bathing houses" to refuse sales or services to "any respectable, well-behaved person, without regard to race, color or previous condition of servitude."

This act was not reaffirmed in later codes, nor was it enforced. The seat of our democracy became, or remained, a community in which the rights of Negroes were restricted. The Supreme Court has now held, by an 8-to-0 vote, and against the rulings of lower courts, that the old law was and is valid. On the face of this decision persons refusing service on account of race are subject to fine and to forfeiture of their license to do business.

The court postponed decision on cases which would compel it to re-examine segregation in schools and to reassert or reverse the "separate-but-equal" doctrine. Yesterday's decision was of relatively minor constitutional importance. Yet it ran in harmony with the noble words of an old document, which says that "all men * * * are endowed by the Creator with certain inalienable rights." In time we may in practice as in theory follow the precepts of 1776.

One cannot help thinking back to last year's Presidential campaign, when the Republican nominee promised: "We shall eliminate every vestige of segregation in the District of Columbia." While the Supreme Court is hardly concerned with President Eisenhower's pledges, it is surely realistic enough to see that the present decision takes a big chip out of segregation. Whether this indicates anything as to the court's attitude on the all-important cases of school segregation, which have been set for reargument in the fall, remains to be seen. But the Supreme Court has posed some extremely specific questions which seem to indicate a disposition to come to close and practical grips.

12d 1953

Crusader Brown Is Exception—

Few Changes Noted In Cafes As Capital Segregation Ends

WASHINGTON, June 9 (AP)—The color line vanished in restaurants of the nation's capital today by order of the Supreme Court. But with hard-to-find exceptions, White and Negro residents continued to eat and drink apart.

The high court yesterday, by an 8 to 0 vote, upheld an 1873 law requiring that "any well-behaved and respectable person" be served in "any eating house, restaurant, eating house, bar room, ice cream saloon or soda fountain" in the District of Columbia.

District officials promptly announced the long-mislaid law would be enforced beginning tomorrow. Most restaurants beat the deadline by scrapping their "White Only" policy at once. A spot check showed, however, almost no Negroes asked for service in restaurants where formerly they were unwelcome.

One exception was Edgar Brown, bearded veteran Negro crusader for equal rights. Brown made a tour of Thompson's Restaurants, the chain involved in the Supreme Court test case, and reported he was served courteously in every one.

At the peak of today's lunch hour rush there was not a single Negro patron in the 14th Street Thompson's Cafeteria where two Negroes were refused service three years ago, thus precipitating the court fight which led to yesterday's decision.

This didn't surprise the heads of local Negro organizations, who welcomed the Supreme Court action as a step toward equality of races but doubted there would be any great change in the immediate segregation pattern.

Belford Lawson, Jr., president of the District Chamber of Commerce, a Negro organization, told a reporter very few Negroes can afford to patronize downtown restaurants, although some eat in drugstore and five-and-ten cafeterias which voluntarily have lowered racial bars in recent years.

The head of the local branch of the National Association for the Advancement of Colored People, Eugene Davis, commented:

"Many people who read about this thing have visions of men in overalls coming in and sitting beside them. But they'll soon see that we have people of culture and education and decency just as the white race has. And once they see that the battle is won."

Of the approximately 2,000 restaurants in Washington, more than 1,750 have barred Negro customers in the past. Any that do so hereafter will be risking a $100 fine and a revocation of their license for at least a year.

High Court Rules D. C. Restaurants Must Serve Negroes

WASHINGTON (AP)—The Supreme Court today upheld an 1873 law which required District of Columbia restaurants to serve Negroes provided they are well behaved.

The act has not been enforced for many years.

But not even today's 8-0 high court ruling wiped out the long litigation that has grown out of the practice in many eating places here to refuse to serve Negroes.

The tribunal sent the case back to the Court of Appeals here and told it to decide whether the 1873 law — guaranteeing that well-behaved persons of any race be served at regular prices—repealed one enacted a year earlir. The 1872 law required that all "respectable" persons be servd without regard to race.

The point is a technical one, and has no real bearing on the court's finding.

Douglas spoke for himself and seven other members of the court. Justice Jackson took no part in the case.

Douglas said the power of Congress over the District of Columbia relates not only to "national power" but to all "The powers of legislation which may be exercised by a state in dealing with its affairs."

Hence, he said, Congress had the authority to delegate its law-making power to the old legislative assembly that was created by an act of 1871.

Of the anti-discrimination laws Douglas wrote:

"The laws which require equal service to all who eat in restaurants in the district are as local in character as laws regulating public health, schools, streets and parks."

On the question of whether the 1872 and 1873 laws were abandoned or repealed as the result of non-use and administrative practice, Douglas said:

"The failure of the executive branch to enforce a law does not result in its modification of repeal. The repeal of laws is as much as a legislative function as their enactment."

DISCRIMINATION

Home Rule Victory

The Supreme Court's unanimous ruling in the Thompson Restaurant case yesterday ends all doubt respecting the constitutional power of Congress to delegate general legislative authority to a District legislature. Thus the cloud which had hovered over home rule ever since a contrary decision was reached in January by a division within the Court of Appeals is completely blown away.

Four judges of the Court of Appeals, led by Chief Judge Stephens, held that the recently revived equal service statutes enacted by the District Assembly in 1872 and 1873 were invalid because they constituted general legislation which the Assembly had no power to pass; they held also that these statutes had been repealed by implication and disuse—a view in which a fifth judge joined them. Four other judges strongly dissented on both counts.

The dissenters have now been fully vindicated by the Supreme Court which decided, in an opinion written by Mr. Justice Douglas, that "the power of Congress to grant self-government to the District of Columbia . . . would seem to be as great as its authority to do so in the case of Territories"; that "there is no constitutional barrier to the delegation by Congress to the District of Columbia of full legislative power"; that the Organic Act of 1871 under which the District Assembly adopted the civil rights statutes "was as broad as the police power of a State" and embraced a power to prohibit "discriminations against Negroes by the owners and managers of restaurants in the District of Columbia"; and that "the failure of the executive branch to enforce a law does not result in its modification or repeal."

This is a sweeping victory for home rule, and we rejoice in Senator Case's prompt response to it. It is also a triumph for the proponents of civil rights legislation. This decision will give impetus to an already accelerating trend in the Nation's Capital—the trend toward obliteration of all enforced segregation and discrimination. The District Commissioners now possess, as they should, ample power to require restaurants to treat all well-behaved customers on a basis of equality, regardless of their race or color. We hope that restaurant owners will cooperate in order to put the law speedily into full effect and that those who have led the civil rights fight will give them a fair chance to make the required changes smoothly and harmoniously.

RESTAURANTS
WASHINGTON, D.C.

Supreme Court Delays Ruling on Segregation

Justices Docket Momentous Cases In Fall; Open Restaurants In Washington to Negroes

By The Associated Press

Washington, June 8.—The Supreme Court today opened restaurants and bars in the national capital to Negroes. But it put off—at least until fall—a decision whether separate public schools for Negroes and whites are unconstitutional in America.

The court ruled, 8 to 0, that an 80-year-old District of Columbia law forbidding racial discrimination by cafes, bars, and ice-cream parlors is valid and still in effect.

The decision was in a case arising from the refusal of a restaurant operated by the Thompson chain to serve a number of Negroes in 1950.

But in the momentous school-segregation case—actually five cases combined—the court said it wanted to hear more arguments, starting October 12, a week after its fall term opens. It heard three days of arguments last December.

The issue holds tremendous social significance for the South and the entire country. It involves: 1, the 14th Amendment to the Constitution, which says all citizens must be treated equally, and 2, an 1896 Supreme Court ruling that segregation is constitutional if equal facilities are provided for Negroes and whites.

Some Negro parents and their attorneys have taken the position that segregation in schools violates the 14th Amendment in any circumstances, regardless of whether equal facilities are provided. They have asked the Supreme Court to toss out the "separate-but-equal doctrine" laid down in 1896.

Would Affect 21 States

Before the high tribunal are cases from South Carolina, Delaware, Kansas, Virginia, and the District of Columbia. A decision on them also will affect 14 other states that make segregation mandatory in public schools and three others, besides Kansas, that allow it.

In other decisions today the court ruled that:

1. Under the Federal Tort Claims Act the Government doesn't have to pay some $200,000,000 in damage claims arising from a series of explosions that killed more than 500 people and injured 3,000 at Texas City, Tex., in 1947. In a 4-to-3 decision delivered by Justice Reed, the court said that in a situation like this the act doesn't apply. The Tort Claims Law makes the United States responsible for "a negligent or wrongful act or omission" of any U. S. employee on official duty.

2. F.B.I. reports need not be handed over to conscientious objectors seeking exemption from military service under the Draft Law. Chief Justice Vinson read the 5-to-3 decision, applying specifically to Harry Gray Nugent and Lester Packer, both of New York, who were sentenced to prison for refusing to submit to induction.

Chief Justice Vinson delivered the court's ruling. Justice Frankfurter wrote a dissenting opinion in which Justices Black and Douglas joined. They said the majority was overlooking the "very purpose" of a hearing—"to give registrants an opportunity to meet adverse evidence." Douglas wrote a separate dissent in which Black joined. Justice Jackson took no part.

3. The Ralston Purina Company, St. Louis manufacturers and distributors of feed and cereals, must register with the Securities and Exchange Commission a private offering of its own stock made to a limited number of its own employees. Justice Clark delivered the 6-to-2 decision.

In ordering the school-segregation cases put back on the docket for more argument in October, the Supreme Court asked opposing lawyers to concentrate on five questions it raised.

These questions hinge chiefly around the 14th Amendment, whic hsays no state may abridge the privileges and immunities of citizens or deny equal protection of the laws to any person. The Amendment was adopted after the Civil War, primarily for the benefit of the newly-enfranchised Negroes.

The high tribunal wants to know, first, what evidence there is that Congress and the states, in approving the 14th Amendment, did or did not intend "that it would abolish segregation in public schools."

If it wasn't the intention to abolish segregation immediately, the court asked, then was it the understanding that Congress or the courts might abolish it later by law or interpretation of the law?

It asked, too, whether the court has the power, in interpreting the Amendment, to end segregation.

Worried About Change-over

The justices further showed their concern over the possible effect of ending segregation by inquiring whether such a ruling would require a decree putting it into effect immediately. They asked whether the court might, instead, "permit an effective gradual adjustment to be brought about from existing segregated systems to a system not based on color distinctions."

The court also raised the question whether it should issue detailed decrees, if it determines they are warranted, or appoint a special master to hear evidence and propose the conditions of the decrees—a process that could take several years.

The justices asked whether, in event of a decision ending segregation, the cases should be sent back to the lower courts for the preparation of decrees, and, if such a step should be taken, what procedures the lower courts should follow in arriving at specific terms of the more detailed decrees.

District Law Valid

In the segregation case decided today, the Justice Department had backed the District of Columbia Government in asking the Supreme Court to upset a court-of-appeals ruling that 1872 and 1873 laws forbidding discrimination by restaurants in Washington were invalid.

The high court held that the legislative assembly that governed the District in those days had authority to pass such laws. And it said subsequent changes in the form of Government in Washington didn't wipe out those laws. It denied that the laws were abandoned or repealed because they haven't been used and enforced.

Cafes End Segregation But Races Dine Apart

By The Associated Press

WASHINGTON — The color line vanished in restaurants of the nation's capital Tuesday by order of the Supreme court. But with hard-to-find exceptions, White and Negro residents continued to eat and drink apart.

The high court Monday, by an 8 to 0 vote, upheld an 1873 law requiring that "any well-behaved and respectable person" be served in "any licensed restaurant, eating house, barroom, ice cream saloon or soda fountain" in the District of Columbia.

District officials promptly announced the long-mislaid law would be enforced beginning Wednesday. Most restaurants beat the deadline by dropping their "White only" policy at once. A spot check showed, however, almost all Negroes asked for service in restaurants where formerly they were unwelcome.

One exception was Edgar Brown, bearded veteran Negro crusader for equal rights. Brown made a tour of Thompson's restaurants, the chain involved in the Supreme court test case, and reported he was served courteously in every one.

At the peak of Tuesday's lunch hour rush there was not a single Negro patron in the 14th street Thompson's cafeteria where two Negroes were refused service three years ago, thus precipitating the court fight which led to Monday's decision.

Court Postpones Ruling On School Segregation

High Tribunal Opens Restaurants And Bars In Washington To Negroes

By DOUGLAS B. CORNELL

WASHINGTON, June 8 (AP)—The Supreme Court today opened restaurants and bars in the national capital to Negroes. But it put off—at least until fall—a decision whether separate public schools for Negroes and whites are unconstitutional in America.

The court ruled 8-0 that an 80-year-old District of Columbia law forbidding racial discrimination by cafes, bars and ice cream parlors is valid and still in effect.

The decision was in a case arising from refusal of a restaurant operated by the Thompson chain to serve a number of Negroes in 1950.

More School Arguments

But in the momentous school segregation case — actually five cases combined — the court said it wanted to hear more arguments starting Oct. 12, one week after its fall term begins. It already had heard three days of arguments last December.

The big issue holds tremendous social significance for the South and the entire country. It involves (1) the 14th Amendment to the Constitution which says all citizens must be treated equally; and (2) an 1896 Supreme Court ruling that segregation is constitutional if equal facilities are provided for both Negroes and whites.

Some Negro parents and their attorneys have taken the position that segregation in schools violates the 14th Amendment in any circumstances, regardless of whether equal facilities are provided. They have asked the Supreme Court to toss out the "separate but equal doctrine" laid down in 1896.

14 Other States Affected

Specifically before the high tribunal are cases from South Carolina, Delaware, Kansas, Virginia and the District of Columbia. When it comes, a decision also will affect 14 other states.

In other decisions today the high tribunal ruled that:

1. Under the Federal Tort Claims Act the government doesn't have to pay some 200 million dollars in damage claims arising from a series of explosions that killed more than 500 people and injured 3,000 at Texas City, Tex., in 1947. In a 4-3 decision delivered by Justice Reed, the court said that in a situation like this the Federal Tort Claim Act doesn't apply. This act makes the United States responsible for "a negligent or wrongful act or omission" of any U. S. employe on official duty.

Conscientious Objectors

2. FBI reports need not be handed over to conscientious objectors seeking examption from military service under the draft law. Chief Justice Vinson read the 5-3 decision, applying specifically to Harry Gray Nugent and Lester Packer of New York who were sentenced to prison for refusing to submit to induction.

3. A woman is entitled to collect for a suitcase containing clothing and jewelry lost by a red cap employe of a railroad while she was changing trains. The 8-0 ruling calls for the New York, New Haven and Hartford Railroad to pay $615 to Mrs. George Nothnagle of Meriden, Conn.

4. The Ralston Purina Company, St. Louis, manufacturers and distributors of feed and cereals must register with the Securities and Exchange Commission a private offering of its own stock made to a limited number of its own employes. Justice Clark delivered the 6-2 decision.

Radio-Telegraph Service

5. The communications commission should reconsider its decision granting MacKay Radio and Television Company the right to operate radio-telegraph service to The Netherlands and Portugal in competition with RCA Communications, Inc. The 5-2 decision was delivered by Justice Frankfurter.

In ordering the school segregation cases put back on the docket for more argument in October, the Supreme Court asked opposing lawyers to concentrate on five questions it raised.

These questions hinge chiefly around the 14th Amendment which says no state may abridge the privileges and immunities of citizens, nor deny equal protection of the laws to any person. The amendment was adopted after the civil war primarily for the benefit of the newly enfranchised Negroes.

The high tribunal wants to know, first, what evidence there is that Congress and the states, in approving the 14th Amendment, did or did not intend "that it would abolish segregation in public schools."

If it wasn't the intention to abolish segregation immediately, the court asked, then was it the understanding that Congress or the courts might abolish it later on by law or interpretation of the law?

It asked, too, whether the court has the power, in interpreting the 14th Amendment, to end segregation.

'Gradual Adjustment'

The justices further showed their concern over the possible effect of ending segregation by inquiring whether a ruling of that sort would require a decree putting it into effect immediately. They asked whether the court might, instead, "permit an effective gradual adjustment to be brought about from existing segregated systems to a system not based on color distinctions."

The court also raised the question whether it should issue detailed decrees, if it determines they are warranted, or appoint a special master to hear evidence and propose the conditions of the decrees—a process that could take several years.

The justices further asked whether, in event of a decision ending segregation, the cases should be sent back to the lower courts for the preparation of decrees. And, if such a step should be taken, what procedures the lower courts should follow in arriving at specific terms of the more detailed decrees.

Capital Restaurants

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The high court held that the legislative assembly which governed the district in those days had authority to pass such laws. And it said subsequent changes in the form of government in Washington didn't wipe out those laws. It denied that the laws were abandoned or repealed because they haven't been used and enforced.

"The failure of the executive branch to enforce a law," the court said, "does not result in its modification or repeal. The repeal

2 Decisions Aid Fight On Schools

NEW YORK — Two recent decisions handed down by federal courts in the South reinforce the drive of the NAACP to outlaw segregation in education, Thurgood Marshall, special counsel, said this week. The decisions involve the refusal of the University of Georgia and a junior college in Texas to admit colored students.

The U. S. District Court in Georgia rejected a petition of the University to dismiss a suit filed last year by Horace Ward to compel the state university to admit him to its law school.

The suit, filed a year ago, alleged that Mr. Ward, a graduate of Morehouse College and Atlanta University, was denied admission to the law school when he first applied in 1950 solely because of his race. The court, in a ruling handed down on May 15, ordered the case set down for trial.

Offer To Pay

The University board of regents had offered to pay a major part of Ward's tuition at a colored law school or any law school in the East where segregation was not practiced. The offer was turned down.

The second victory for the NAACP came in a decision also handed down on May 15 by the U. S. Court of Appeals for the Fifth Circuit, in a case involving six colored students seeking admittance to the all - white Hardin Junior College in Wichita Falls, Texas, the only publicly supported junior college in the district.

The nearest junior college for colored people is the Prairie View A. and M. College, 367 miles away.

A lower court had ordered the Hardin Junior College to admit the colored students in view of the lack of equal facilities. The school board appealed the decision.

9 Million Children Affected By Court Segregation Ruling

ATLANTA, June 8 (AP)—Nearly nine million children in 16 states will be affected by the U. S. Supreme Court decision in the several cases seeking to outlaw segregation in public schools.

An Associated Press survey today showed there are about 8,959,000 students attending public schools in the 14 Southern states which segregate the white and Negro races in their education systems.

In addition, about 25,000 Negroes attend segregated schools in two fringe states, Missouri and Kansas.

Several Lawsuits

Public school segregation long has been under attack by the National Association for the Advancement of Colored People. Several lawsuits over the issue are before the Supreme Court but legal authorities consider one from South Carolina the leading case.

It directly attacks the "separate but equal facilities" theory under which the Southern states have been operating, and which once was sanctioned by the Supreme Court.

The segregation suits were argued before the Supreme Court about six months ago and a decision has been expected for some time.

14 States Affected

The 14 states which segregate white and Negro public school students are South Carolina, North Carolina, Virginia, Mississippi, Louisiana, West Virginia, Texas, Arkansas, Oklahoma, Kentucky, Tennessee, Georgia, Alabama and Florida.

Figures collected for the Associated Press survey give 6,785,000 white and 2,173,000 Negro students in those states.

Texas, of course, has the greatest student body—1,633,911—of which only 13.34 per cent, or 218,000 are Negro.

West Virginia, with a total student body of about 410,561, has the smallest number of Negroes, 25,978 or 5.7 per cent.

Oklahoma, Kentucky

Oklahoma and Kentucky also have small ratios of Negro students. In Oklahoma Negroes make up 7 per cent of the 510,000 total. In Kentucky it is 7.5 per cent of a 440,000 total.

In Mississippi and South Carolina the division is almost equal. Negroes make up 48 per cent of Mississippi's 471,000 and 44 per cent of the 512,000 total in South Carolina.

Thirteen of the states have about 224,637 white teachers and 62,883 Negro teachers. No figures were available on teachers in South Carolina.

Kansas Segregation

Kansas, with 337,416 students, reported there are about 7,281 Negro children in segregated schools in 15 cities. But there is no complete segregation even there, as segregation covers only the first six grades in 12 cities, the first eight in two others and all grades in one other. It is estimated the state has 7,100 Negro children in unsegregated schools.

Missouri, with 611,086 white and 61,997 Negro students, reports only about 19,000 Negroes in segregated schools. They are principally in the "bootheel" cotton section of Southeast Missouri. About 220 of the state's 4,300 school districts have separate schools, and 46 of the 114 counties have no Negro students at all.

School Segregation Questions

Undoubtedly any Supreme Court decision changing the segregation system which exists in the schools of Southern states would bring grave and acute problems. Comments and proposals made in that connection indicate something of the seriousness of the situation that would result. The gravity and complexity of the issue presented in cases challenging the segregation system now before the Supreme Court are reflected in the high tribunal's order, announced yesterday, calling for reargument at its next term.

In its formal order the court listed questions it desires lawyers to discuss. It would be well for all Americans, regardless of their own opinions in this matter, to study and ponder these questions carefully—and, when the new arguments are made, to follow them as closely and comprehensively as possible.

The basic issue before the court is whether the "separate-but-equal" doctrine laid down 57 years ago will be reaffirmed or overturned.

That doctrine has been challenged on the ground that segregation in itself and in actual practice means unfair and unlawful inequality of educational opportunities.

On the other side, it is maintained that the "separate-but-equal" doctrine is in the common interest, that the separate states have and should have authority to decide such matters and that a ruling against the segregation system would lead to critical conditions.

This newspaper shares the view that a decision ordering disruption of the separate systems in the South would produce grave problems. It recognizes that feelings about and direct challenge of that system have already produced a serious situation.

The nation, of course, will continue to wait upon the Supreme Court's decision with deep concern.

Here are the questions which the court presented yesterday for discussion at its next term:

"1. What evidence is there that the Congress which submitted and the state legislatures and conventions which ratified the 14th amendment contemplated or did not contemplate, understood or did not understand, that it would abolish segregation in public schools?

"2. If neither the Congress in submitting nor the states in ratifying the 14th amendment understood that compliance with it would require the immediate abolition of segregation in public schools, was it nevertheless the understanding of the framers of the amendment

"(a) That future Congresses might, in the exercise of their power under Section 5 of the amendment, abolish segregation, or

"(b) That it would be within the judicial power, in light of future considerations, to construe the amendment as abolishing such segregation of its own force?

"3. On the assumption that the answers to Questions 2 (a) and (b) do not dispose of the issue, is it within the judicial power, in construing the amendment, to abolish segregation in public schools?

"4. Assuming it is decided that segregation in public schools violates the 14th amendment,

"(a) Would a decree necessarily follow providing that, within the limits set by normal geographical school districting, Negro children should forthwith be admitted to schools of their choice, or

"(b) May this court, in the exercise of its equity powers, permit an effective gradual adjustment to be brought about from existing segregated systems to a system not based on color distinctions?

"5. On the assumption on which Questions 4 (a) and (b) are based, and assuming further that this court will exercise its equity powers to the end described in Question 4 (b),

"(a) Should this court formulate detailed decrees in these cases;

"(b) If so, what specific issues should the decrees reach;

"(c) Should this court appoint a special master to hear evidence with a view to recommending specific terms for such decrees;

"(d) Should this court remand to the courts of first instance with directions to frame decrees in these cases, and if so what general directions should the decrees of this court include and what procedures should the courts of first instance follow in arriving at these specific terms of more detailed decrees?"

The American people, knowing the gravity and complexity of this issue, will be prayerfully hoping that they will be guided by right and wisdom in dealing with it.

It is evident that the court is considering the case with the greatest care, that it is striving to obtain the utmost light on all the questions and conditions involved. It is apparent, we think, that the court is seeking to meet on the highest and most comprehensive levels, in wisdom and justice, the momentous and very difficult responsibility it faces.

Deadlock Delays Ruling on School Segregation Issue

By LUTHER A. HUSTON
New York Times News Service, Special to The Atlanta Constitution

WASHINGTON, June 8—The U. S. Supreme Court ruled today that restaurants in the District of Columbia may not legally refuse to serve meals to Negroes who are well-behaved.

In five cases involving segregation in public schools, the high court was not able to reach a decision. The cases were set for reargument in the fall.

The court held valid in the restaurant case a statute enacted in 1873 that made it a criminal act for proprietors of public eating places to refuse to serve any person solely because of race or color.

The ruling was by vote of 8-to-0, with Justice Jackson abstaining because he had been ill and did not hear the argument.

Rearguments on the school segregation cases were set for Oct. 12, one week after the court reconvenes for the fall term. The present term will end next Monday.

The school segregation cases were argued last December and in the intervening six months have been the outstanding issue facing the justices, who were reported to be hopelessly divided on matters of law and public policy involved.

In setting them for reargument the court indicated the nature and degree of its perplexities by asking counsel to discuss five specific phases of the cases in their briefs and oral arguments.

The questions the court asked be discussed were:

1. What evidence is there that the Congress which submitted and the state legislatures and conventions which ratified the 14th Amendment contemplated or did not contemplate, understood or did not understand, that it would abolish segregation in public schools?

THE UNDERSTANDING?

2. If neither the Congress in submitting nor the states in ratifying the 14th Amendment understood that compliance with it would require the immediate abolition of segregation in public schools, was it nevertheless the understanding of the framers of the amendment?

(a) That future Congresses might, in the exercise of their power under Section 5 of the amendment, abolish such segregation, or

(b) That it would be within the judicial power, in light of future conditions, to construe the amendment as abolishing such segregation of its own force?

IN JUDICIAL POWER?

3. On the assumption that the answer to questions 2 (a) and (b) do not dispose of the issue, is it within the judicial power, in construing the amendment, to abolish segregation in public schools?

4. Assuming it is decided that segregation in public schools violates the 14th Amendment,

(a) Would a decree necessarily follow providing that, within the limits set by normal geographical school districting, Negro children should forthwith be admitted to schools of their choice, or

(b) May this court, in the exercise of its equity powers, permit an effective gradual adjustment to be brought about from existing segregated systems to a system not based on color distinction?

DETAILED DECREES

5. On the assumption on which questions 4 (a) and (b) are based, and assuming further that this court will exercise its equity powers to the end described in question 4 (b).

(a) Should this court formulate detailed decrees in these cases:

(b) If so what specific issues should the decrees reach;

(c) Should this court appoint a special master to hear evidence with a view to recommending specific terms for such decrees;

(d) Should this court remand to the courts of first instance with directions to frame decrees in these cases, and if so what general directions should the decrees of this court include and what procedures should the courts of first instance follow in arriving at the specific terms of more detailed decrees?

Supreme Court's postponement of segregation decision apparently gives green light to Georgia school building program. *Story on Page 5.*
Reaction of southern governors to delay, *Page 12.*

State Tax Increase Seems Unlikely As Segregation Decision Postponed

By The Associated Press

Now that the Supreme Court has postponed a decision on racial segregation in public schools until next fall, it appears unlikely that the Alabama legislature will approve any tax increase.

The state lawmakers have gone down the line with Gov. Gordon Persons' stand against any tax hike, but some emergency increase would certainly have been brought up if the Supreme Court had knocked out separation of the races in public schools.

The high tribunal called for new arguments starting Oct. 12 on a series of questions dealing with the issue.

Even a move inspired by educational forces to remove sales tax exemptions on feed stuff for livestock, insecticides and fungicides has all but died.

Approved by the 1951 legislature, the exemptions become effective June 30. An education Department study revealed that the exemptions will cut sales tax revenue ordinarily earmarked for education by about one-third million dollars.

Rep. Edward B. Miller of Etowah, sponsor of the repealer in the House said he was informed after introducing the measure that agricultural forces had agreed on a "trade" when the sales tax was boosted from two to three per cent in 1951.

Explaining that he does not intend to make an effort to get the bills out of the Ways and Means Committee, Rep. Miller said "I had no knowledge of a trade when I offered the legislation to repeal the exemptions."

"I understand there was a gentleman's agreement on it and as a result the agriculture crowd did not fight the administration's sales tax increase which had meant about 20 million a year to education."

Rep. Miller's refusal to make an effort to get the repealer out of committee means the bills are dead for this session unless another legislator tries to revive them.

However, while a tax increase on the state level seems unlikely, educators are apparently going ahead with plans for a constitutional amendment which would allow more funds to be raised locally for schools.

School groups, including the Alabama Education Association, have recommended increasing the constitutional ceiling from seven to 12 1-2 mills on a county option basis.

Thus counties voting to boost property taxes to help their schools could increase them 5 1-2 mills. The constitutional limit now is seven mills.

Several counties have already passed constitutional amendments to raise their tax rates.

Segregation Ruling Delay Spurs School Bond Issue

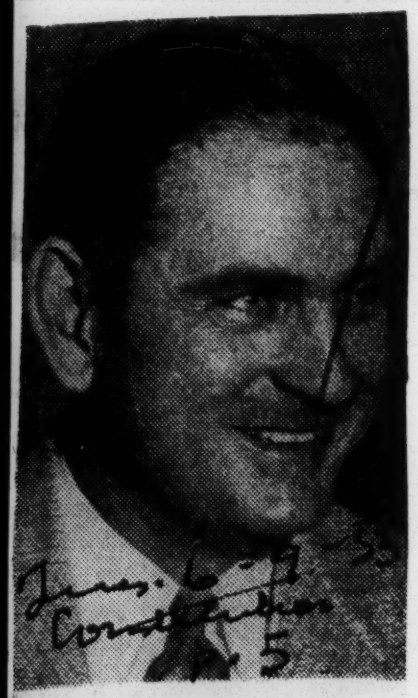
The State School Building Authority set in motion Monday plans to issue up to $66,000,000 worth of additional revenue certificates, following a U. S. Supreme Court announcement that the court will not rule until October on the constitutionality of segregation in public schools.

House Speaker Fred Hand, authority chairman, said "we have started to move already" and added that the next issue of revenue certificates will come out as soon as humanly possible."

The authority already has issued and sold about $33,000,000 worth of revenue certificates to finance a start on Georgia's long school building program. Another $66,000,000 worth of bonds are ready for issuance.

Sale of the second issue has been held up several months, however, pending a decision in the South Carolina segregation cases in the U. S. Supreme Court.

Hand said he assumes the court's postponement of a ruling "gives us a green light" to go ahead with the second bond issue. Actually, the authority can't be sure until next week, he said, but preliminary plans are ready for issuing the certfi-



SEES GREEN LIGHT
Speaker Fred Hand

cates. It cannot yet be determined, he said, whether the entire $66,000,000 worth will be issued at one time.

It has been planned for the authority to go ahead with the school building program, regardless of how the U. S. Supreme Court rules on segregation. But the delay has been caused by the desire to issue the bonds at an advantageous time when the best interest rate can be obtained.

State Auditor B. E. Thrasher Jr., member of the authority, was more cautious than Hand. Thrasher said the sale of the bonds will depend on a conference with securities dealers in New York.

Atty. Gen. Eugene Cook expressed the fear that the Supreme Court's postponement or the decision might actually delay Georgia's building program.

Governor Talmadge said, "I don't know," when asked what he thought the effect of the court's postponement would be. "The court hasn't said 'yea' and it hasn't said 'nay'," Talmadge added, "and you can't tell anything from that."

Court May Have Let Go Separate But Equal Policy

ACTION of the Supreme Court in ordering attorneys to reargue the pending school segregation cases next October suggests two possible outcomes when the court finally decides to render a decision:

(1) The court has made up its mind to abandon the "separate but equal" doctrine, but wants to give the states affected more time to condition themselves for the impact of the decision.

(2) The court hopes to derive from a re-discussion along the lines indicated in its order a way to abolish segregation in the public schools by gradual steps.

To the laymen in suspense those two courses are easy to speculate upon after reading the court's order.

A postponement that could run for more than a year after the court has already had the matter under consideration for six months seems to support the first possible outcome.

MARSHALL
vs.
DAVIS

That the court seems to be asking for detailed arguments on questions that could be construed as providing broader latitude for dealing with "privileges and immunities" and "equal protection of the laws" seems to support the second presumption.

Consider the court's question four, for example:

"(4). Assuming it is decided that segregation in the public schools violates the Fourteenth Amendment,

"(A) Would a decree necessarily follow providing that, within the limits set by normal geographical school districting, Negro children should forthwith be admitted to schools of their choice, or

"(B) May this court, in its equity powers, permit an effective gradual adjustment to be brought about from existing segregated systems to a system not based on color distinctions."

The court seems to have decided what its highest duty is, but is searching for a way to perform this duty and at the same time avoid the possible happening of the earth-shaking consequences pictured to the court by attorneys for the states and by some of the governors.

The postponement undoubtedly reflects the feeling on the part of the court that it has before it for decision the most important social change proposed since the Civil War.

Its cautious deliberations and its evident searching for remedies which will cure moral and legal wrongs that have been endured for nearly a century, would indicate, to this writer, that a solution has been agreed upon.

If that is true, the court may be pondering the rise of other serious and difficult problems, that in practical effect, would bring the whole question back to the court in a different form, as the abolition of the public schools in any state surely would do.

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EDUCATION

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Court Puts Off Ruling On Segregation

WASHINGTON (AP)—The Supreme Court today put off until next fall—at the earliest—any decision on the legality of racial segregation in public schools.

Unable to reach a decision in the five cases before it, the high tribunal called for reargument next October 12 of whether to reaffirm or overturn the separate-but-equal doctrine it laid down 57 years ago.

The new arguments will begin on the second day of the court's fall term. The court meets for the first time on October 5, then recesses to October 12.

The five cases were first argued last December 9, 10 and 11. They involve separate schools for white and Negro pupils in South Carolina, Virginia, Kansas, Delaware and the District of Columbia.

Lawyers have said any general ruling on the segregation issue would affect 13 other states which require complete or partly separate school systems, plus three other states which permit segregation.

Thus the decision, when it comes, will be momentous.

A ruling against segregation could lead to the abolition of public school systems as they now exist in South Carolina, Georgia Virginia.

Georgia's Gov. Herman Talmadge has said bloodshed would follow such a finding.

The court's call for reargument was issued in a formal order. It listed a series of questions the justices want discussed by lawyers in the fu

They include:

"1. What evidence is there that the Congress which submitted and and the state Legislatures and conventions which ratified the 14th Amendment contemplated or did not contemplate, understood or did not understand, that it would abolish segregation in public schools?

"2 If neither the Congress is submitting nor the states in ratifying the 14th amendment understood that compliance with it would require the immediate abolition of segregation in public schools, was it nevertheless the understanding of the framers of the amendment (A) that future congresses might, in the exercise of their power under section 5 of the Amendment, abolish segregation or (B) that it would be within the judicial power in light of future considerations, to construe the amendment as abolishing such segregation of its own force?

"3. On the assumption that the answers to questions two (A) and (B) do not dispose of the issue, is it within the judicial power, in construing the amendment, to abolish segregation in public schools?

"4. Assuming it did decided that segreation in the public schools violates the 14th amendment,

"(A) would a decree necessarily follow providing that, within the limits set by normal geographical school districting, Negro children should forthwith be admitted to schools of their choice, or

"(B) may this court, in the exercise of its equity powers, permit an effective gradual adjustment to be brought about from existing segregated systems to a system not based on color distinctions?

"5. On the assumption on which questions 4 (A) and (B) are based, and assuming further that this court will exercise its equity powers to the end described in question 4 (B),

"(A) should this court formulate detailed decrees in these cases)

"(B) if so, what specific issues should the decrees reach;

"(C) should this court appoint a special master to hear evidence with a view to recommending specific terms for such decrees;

"(D) should this court remand to the courts of first instance with directions to frame decrees in these cases and if so what general directions should the decrees of this court include and what procedures should the courts of first instance follow in arriving at these specific terms of more detailed decrees?

"The Attorney General of the United States is invited to take part in the oral argument and to file an additional brief if he so desires."

(End Text)

The 14th amendment which is involved in the cases, says no state may abridge the privileges and immunities of citizens, nor deny equal protection of the laws to any person. The amendment was adopted after the Civil War primarily for the benefit of the newly enfranchised Negroes.

5 Questions Are Listed By Justices

Argument Is Set Oct. 12; Scope of Inquiries Suggests Tribunal's Split

(Text of Questions, Page 9.)

By Chalmers M. Roberts
Post Reporter

The Supreme Court yesterday put off for many months a decision on the public school segregation cases.

The justices listed five questions they want lawyers to discuss when the cases are reargued before the high court on October 12. Listing of the questions and their scope indicated the court had been unable to get a majority to agree in the cases which affect the District, Virginia, South Carolina, Kansas and Delaware.

At the end of the questions was this simple sentence:

"The Attorney General of the United States is invited to take part in the oral argument and to file an additional brief if he so desires."

This proper courtesy to the Administration head legal officer means that Attorney General Herbert R. Brownell now will have to decide, doubtless with the advice and consent of the President, whether to follow the path of their Democratic predecessors when the school cases were up last year and ask the Court to end "separate but equal" schools. Or the Administration could reverse the Federal Government's past position and take the attitude that the matter is solely a problem for the states.

court publicly propounded covered both past history and possible court rulings. First, the justices called for "evidence" on whether those who put the Fourteenth Amendment (a post-Civil War measure designed to protect the newly freed slaves) into the Constitution contemplated or understood that it would abolish segregation in public schools.

Second, the justices asked whether, assuming there was no such understanding by Congress and the State, did the amendment's framers understand that future Congresses might abolish segregation or that the Supreme Court "in the light of future conditions" had the "judicial power" to "construe the amendment as abolishing such segregation of its own force?"

Third, the court called for discussion on whether (if the answers to the first two questions fail to dispose of the issue) "it is within the judicial power, in construing the amendment, to

5 Questions Asked by Court on School Issue

The text of the five questions the Supreme Court yesterday asked lawyers in the public school segregation cases to cover when the case is reargued October 12 follow:

1. What evidence is there that the Congress, which submitted, and the State legislatures and conventions, which ratified the fourteenth amendment contemplated or did not contemplate, understood or did not understand, that it would abolish segregation in public schools?

2. If neither the Congress in submitting nor the States in ratifying the fourteenth amendment understood that compliance with it would require the immediate abolition of segregation in public schools, was it nevertheless the understanding of the framers of the amendment,

A. That future Congresses might, in the exercise of their power under section 5 of the amendment, abolish segregation, or

B. That it would be within the judicial power in light of future considerations, to construe the amendment as abolishing such segregation of its own force?

3. On the assumption that the answers to questions two "A" and "B" do not dispose of the issue, is it within the judicial power, in construing the amendment, to abolish segregation in public schools?

4. Assuming it is decided that segregation in public schools violates the fourteenth amendment,

A. Would a decree necessarily follow providing that, within the limits set by normal geographical school districting, Negro children should forthwith be admitted to schools of their choice, or

B. May this court, in the exercise of its equity powers, permit an effective gradual adjustment to be brought about from existing segregated systems to a system not based on color distinctions?

5. On the assumption on which Questions 4 "A" and "B" are based, and assuming further that this court will exercise its equity powers to the end described in Question 4 "B,"

A. Should this court formulate detailed decrees in these cases;

B. If so, what specific issues should the decrees reach;

C. Should this court appoint a special master to hear evidence with a view to recommending specific terms for such decrees;

D. Should this court remand to the courts of first instance with directions to frame decrees in these cases, and if so what general directions should the decrees of this court include and what procedures should the courts of first instance follow in arriving at these specific terms of more detailed decrees?

The Attorney General of the United States is invited to take part in the oral argument and to file an additional brief, if he so desires.

Uncertainty Ill Becomes the High Court

JUSTICES of the Supreme Court continue to juggle the hot potato of racial segregation in public schools. They do so with a timidity that is almost startling.

In effect that court says that it does not know its own mind on the subject. It puts off until next term, which starts October 12, further discussion of the issue and asks in the meantime more light from the lawyers of both sides. It poses five questions, and some of these make it hard to miss the idea that the justices are themselves groping in a kind of desperation, wistfully seeking moral support.

The first two questions are extraordinary. They amount to a searching of dead men's minds. Is there any evidence that the Congress of 1866 which submitted the 14th Amendment, and the legislatures and conventions that ratified it, thought of it in connection with segregated public schools? What did they think future Congresses or courts might do to use the amendment to end segregation in schools?

The crowning uncertainty follows in the court's request for light on the question whether it has the power, "in construing the amendment, to abolish segregation in public schools."

If it has the power, shall it do the abolishing forthwith, or "permit an effective gradual adjustment?" And in any case, what ought to be the form of the court's decree?

It is as if the court finds responsibility too heavy a burden to bear. We can fairly see the brow of old ROGER B. TANEY, who reached out a firm hand to write the DRED SCOTT decision, right or wrong, wrinkling in an Olympian scowl.

The segregation issue is indeed a large one. Actually, however, it is not far different in kind from those issues which the Supreme Court resolved to nullify the white primary, to open the way for non-segregated interstate travel, and to hasten the enrollment of Negroes in "white" graduate and professional state schools in the South.

At that, there are some citizens who will see a kind of progress even in the uncertainty of the justices. They are divided on the issue, at last. They have not moved automatically, as the states' rights and white-supremacy advocates asked them to move, in the easy way of following the lines of the *Plessy vs. Ferguson* decision of 1896. This was the case in which the principle of "separate but equal" facilities was approved.

Perhaps, after all, the justices see the light, see the need for the United States to stand up before a world in which the dark races look toward us for the equality we profess, see the cost and folly of alternatives such as have been proposed in South Carolina and Georgia. Perhaps they see a fairly clear course between the confusions of the practical and the philosophical. Perhaps all this is so and they are merely once more showing themselves to be, as they have demonstrated before, one of the most cautious of courts.

Delay A Keen Disappointment

The Supreme Court's failure to rule on the school segregation cases comes as a deep disappointment to Americans all over the country. For six months, we have waited for the decision. Arguments in the five cases were made last December. Yet, at adjournment time in June, the nine justices ask for further arguments.

It is hard for us to believe that the Supreme Court needs additional arguments to help it arrive at a just and fair decision. We see in the postponement of the cases a respite for the proponents of segregation—a few more months to prepare for the inevitable, the declaration that segregation per se is unconstitutional.

When the decision does come, it will rock the very foundation of the segregation system which has been a part of the South for so many generations. Even the Supreme Court hesitates to bring about such a change abruptly. To us who are directly affected and who naturally are impatient for the ruling, it seems unnecessary and unfair to longer delay the decision. The Supreme court seldom carries over a case from one term to the next. This unusual procedure gives rise to much speculation. One man's opinion is as good as another's. Only the justices themselves know why they are biding for time. Although we are bitterly disappointed in the delay, we take the optimistic view—that it means ultimate victory for those forces working for full democracy for all citizens.

The court's setting of October 12 as the date of new arguments in the five cases puts a decision off until next spring—possibly another year. After the arguments are heard, the court again will take the cases under advisement and we may have to wait until near adjournment time again to get the ruling.

There is nothing that we can do about the court's delay. There is no appeal. All we can do is take our disappointment on the chin and hope that the delay is intended as a warning to the South that its way of life is doomed and that it has one more year---at the most---to get ready to meet the challenge of real democracy.

Lower courts which have been holding up rulings in local cases until the United States Supreme Court acted in the segregation cases may as well go ahead and decide their cases. There is no need to hold up all the civil rights cases for another year.

One such case in point is the Swope park swimming pool case which is on appeal to the Missouri state supreme court. The state court has had the case long enough to issue its ruling. It was understood that the Missouri justices were waiting to use the Supreme Court ruling as a guide.

Instead of waiting, the Missouri court can follow the decision in the St. Louis swimming pool case, or if determined to be guided by the U. S. Supreme Court, it can follow the example set in declaring discrimination in Washington, D. C., cafes and restaurants illegal. This victory in the Thompson restaurant case in some way offsets our disappointment in the delay of the school cases.

States Get Reprieve On Segregation Issue

States struggling to find some solution to the problem of school segregation have been given a reprieve by the Supreme Court of the United States. This is the effect of the decision announced yesterday by the court, which has asked for additional argument to be made on Oct. 12. The court will be in adjournment until about that time.

Hope still prevails that even if the court does strengthen its position against segregation at the college level, it will leave to the states direction of the grade schools for at least a period of years and that, in this manner, any sudden and complete reversal of a custom operating under a Supreme Court decision will be avoided.

But this hope may be in vain. States and communities which may be affected are urged to study the problem and consider what may be done by local agreements, co-operation and administrative decisions if next fall, or by 1954, the court should reverse the former decision establishing the policy of "separate but equal" facilities as constitutional.

Each community will do itself, the state, and the South a service if a calm and rational study is made.

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Man-on-the-Street Opinion

Many Agree Court Needs More Time In School Cases

A majority of the people interviewed by the Courier this week agree that the United States Supreme Court needed more time to accurately measure the effects of a ruling on th issue of segregation in the public schools of the nation.

Of those queried, 14.5 per cent said that the High Court needed more time, and an impressive 35.5 per cent charged that the justices were "dodging the issue."

The remaining 20 per cent, of those interviewed, were "undecided."

Some of the comments were as follows:

Alabama

BIRMINGHAM—Roy Hunter Jr., college professor: "It appears that the justices were afraid to uphold the truth inherent in the very Constitution they are to support, interpret and uphold . . . the Negro is engaged in a battle which he must fight almost alone."

William Edward, Miles College student: "Putting off things of vast importance is no good to progress . . . the Supreme Court should have taken action."

Eugene Grant, theatre manager: "I think that the U. S. Supreme Court should have knocked out the segregated school system in America. If you keep putting off, it will be a thing that will never come to being a reality."

Atty. Arthur D. Shores: "I was keenly disappointed that it did not rule before the court recessed, but I feel that the court is desirous of putting at rest the question of the legality of segregation once and for all times."

Atty. Orzell Billingsley Jr.: "The delay is indicative that the Supreme Court realizes the seriousness of segregation in the public school systems, but that **it is desirous to give the issue involved in the school cases due consideration and care."**

J. Clyde Johnson, secretary Lincoln GOP Club: "When the decision comes, I think it will be broad and sweeping. The court's delay, I think, is to prepare the public for the downfall of racial segregation."

Carol W. Hayes, supervisor Birmingham Negro Schools: "I'll have to wait until the decision is made."

* * *

FAIRFIELD—William Peterson, laborer: "The time was ripe for the Supreme Court to outlaw segregated schools in America. If the United States continues to preach democracy, it is high time for it to be practicing it, such as knocking out all second-class citizenship."

Charles A. Alford, instructor, Fairfield Industrial High School: "I don't see any need of postponing anything that is legal, which is equalization of educational opportunities for all children, regardless of race, creed or color."

* * *

Louisiana

NEW ORLEANS — Atty. Louis Berry: "It is my opinion that the Supreme Court will face this problem fairly and honestly and will hand down the type of decision that will make democracy a reality for all of its citizens."

Ernest J. Wright, director of Peoples Defense League: "The banning of separate schools for Negro and white children is inevitable regardless of the Supreme Court's decision. The restlessness of the people of the world and their willingness to fight and die in their thirst for full freedom will force America to give all citizens a square deal."

Atty. A. P. Tureaud: "The questions projected by the court show the justices' profound respect for the Constitution of the United States, as well as a determination to consider all aspects of the cases before reaching a decision."

* * *

North Carolina

GREENSBORO — Dr. David D. Jones, president, Bennett College: 'I think the court was right in delaying judgment at this time, and I think that the fact that they did is an indication that they will rule against segregation."

Dr. F. D. Bluford, president, A. & T. College: "It was my thinking all along that the court would rule against segregation, but even if they have it in mind now, another argument might change it."

* * *

DURHAM—Albert L. Turner, Dean North Carolina College Law School: "I think it probably wouldn't be wise to surmise or anticipate on the court or draw too many inference of their intentions."

John H. Wheeler, president Mechanics and Farmers Bank: "For the South's economic and social salvation and for the protection of our nation's world position, it is imperative that we shall have behind us the majesty of a court decree in our efforts to put an end to this practice which causes the world to stand aghast at the great gulf between our ideals and our parctices."

* * *

Virginia

PETERSBURG — President R. P. Daniel of Virginia State College: "It strikes me that the delay indicates a definite disagreement among the judges as to what their decisions should be . . . I am not at all sure that all of the cases will be decided in one decision."

* * *

RICHMOND—J. Rupert Picott, executive secretary Virginia State Teachers Association: "Provides an opportunity for constructive propaganda. The Supreme Court has enabled the citizens of the South and of America to view again calmly and impassionately their problems in education and related fields."

* * *

South Carolina

CHARLESTON—Jess T. Anderson, State Superintendent of Education: "We are moving right along with our efforts to equalize."

James M. Hinton, president of S. C. NAACP: "I am just as optimistic now as I ever was and I think that the delay is just as much in our favor as it was before."

* * *

MANNING—J. S. Boyd, retired school teacher: "We will be satisfied with nothing short of integration."

* * *

Georgia

ATLANTA—The Rev. W. W. Weatherspool, Mount Zion Baptist Church: "By giving more time, it (the court) is allowing the people to adjust to what must come . . . the end of the jim-crow system."

Dr. J. B. Harris, physician: "I thought those guys would molly-coddle."

H. S. Murphy, printer: "It seems like the Supreme Court is between the devil and the deep blue sea. Looks like they are holding back."

Atty. A. T. Walden: "Due to the tremendous importance of the case. I am not surprised that they (the justices) are taking further time to consider all sides to the question."

W. Gamewell Valentine, music teacher: "The Supreme Court has quite a responsibility. If they need more time to decide, let them have it . . . However, they know the practice is illegal."

L. D. Reddick, Atlanta U. librarian: "Obviously, the Supreme Court is facing a decision it must finally make . . . and a hard decision for them. Either way, it will have to have careful and full consideration."

The Rev. R. H. Milner, Brown Avenue Baptist Church: "It (the failure to hand down an opinion) looked sort of cloudy to me."

Dr. Virginia Jones, head of Atlanta U. library school: "They have got a hot potato, but they have got to handle it finally."

The Rev. M. L. King, Ebenezer Baptist Church: "I expected it . . . they've got to feel public opinion."

The Rev. A. L. Fisher, pastor West Hunter Baptist Church: "I know what they're doing. They are allowing Mississippi, Alabama and Georgia to build up more schools and argue that the separate, but equal theory can work."

Prof. Joe Brooks of Ala. State College, Montgomery, Ala.: "They may need more time to decide that case."

The Rev. D. T. Babcock, pastor St. Mark AME Church: "They're afraid of that thing. They talk about democracy around the world, but they are afraid of it at home!"

The Rev. W. B. Brewster, pastor Cartersville AME Church: "I was expecting that. It is a hot case, predicated upon the overall picture and present attitudes in the South."

J. R. Wilson Jr., realtor: "They didn't face it at this time, but they have got to."

C. T. Perkins, Georgia NAACP field secretary: "A ruling against jim-crow education is inevitable despite delays."

For Decision

Big Day Awaited

By STANLEY ROBERTS
(Courier Washington Correspondent)

WASHINGTON—The Supreme Court on Monday put off until next fall—at the earliest—any decision on the legality of racial segregation in public schools.

Hundreds of Negroes—lawyers and laymen—who crowded the magnificent judicial building here were disappointed when the justices listed the questions they want NAACP counsels to discuss when cases will be reargued before the high court on Oct. 12.

Cases now before the court affect the District of Columbia, Virginia, South Carolina, Kansas and Delaware.

The Attorney General of the United States was also invited to take part in the oral arguments and to file additional brief if he so desires.

THIS MOVE definitely puts

The five questions put to the lawyers include:

1. What evidence is there that the Congress which submitted and the States Legislatures and conventions which ratified the Fourteenth Amendment contemplated or did not contemplate, understood or did not understand, that it would abolish segregation in public schools?

2. If neither the Congress in submitting nor the States in ratifying the Fourteenth Amendment understood that compliance with it would require the

the Eisenhower Administration on the spot in that Attorney General Herbert Brownell, if he files a brief must give the Administration's stand on school segregation.

Ike has been preaching states rights for some time and the nation will be watching with interest what the Government's position will be.

systems not based on color distinctions?

5. On the assumption on which questions 4(a) and (b) are based, and assuming further that this Court will exercise its equity powers to the end described in question 4(b),

(a) should this Court formulate detailed decrees in these cases;

(b) if so, what specific issues should the decrees reach;

(c) should this Court appoint a special master to hear evidence with a view to recommending specific terms for such decrees;

(d) should this Court remand to the courts of first instance with directions to frame decrees in these cases, and if so what general directions should the decrees of this Court include and what procedures should the courts of first instance follow in arriving at the specific terms of more detailed decrees?

Postponing School Issue

WHILE the U. S. Supreme Court has been unanimous and forthright in its decision against restaurant jim crow in Washington, D. C., it has deftly pussyfooted on the much broader and controversial issue of racial segregation in the public schools.

The court had before it the obligation to decide whether segregation is discrimination, and if so, as the NAACP lawyers contend, whether public school segregation should be abolished — and the court ducked the issue by postponing the whole thing until Oct. 12.

Since almost everything that can be said for and against public school segregation has been said, it is difficult to see why the court ordered a rehearing instead of making a decision — unless it was hopelessly split, as may well have been the case.

The imposition of public school segregation was one of the first efforts of the defeated slave power to retrieve its losses.

Then came legal disfranchisement, segregation in public places and residential segregation: all designed to win for the unreconstructed South what it could not win on the field of battle.

It is fully realized by this reactionary element that with Negroes increasingly gaining the vote, and with residential segregation outlawed, all that remains is segregation in education and public places, and the long campaign to keep the Negro down will be lost if these are abolished.

If public school segregation is defeated, segregation in public places cannot long last, which is why the reactionary South is making a last ditch fight against it, why the Supreme Court is torn asunder over the issue, and why the decision has been postponed.

However, this is merely putting off the inevitable because as sure as day follows night, public school segregation is doomed.

FIFTEEN MILLION NEGROES IN UNITED STATES AWAIT SUPREME COURT'S MOMENTOUS DECISION

Hope High Tribunal Will Outlaw 60-Year-Old Decision in Plessy vs Ferguson

MANY BELIEVE SCHOOL SEGREGATION ON SKIDS

(By James J. Foree)

CHICAGO — (ANP) — Most Negroes are hopefully expecting the U. S. Supreme Court to outlaw the "separate-but-equal" theory established by the high tribunal nearly 60 years ago.

The cause around which this theory was formulated was that of Plessy versus Ferguson heard by the Supreme court in 1896. The case which offers the nation's highest tribunal an opportunity to undue this wrong done the country's largest minority is that involving segregation in public schools. Both cases, however, involve the constitutional rights of citizens.

Most of us are aware of the now famous dissenting opinion of the then Judge J. Waties Waring which said in the Clarendon county school case that segregation per se (in itself) is inequality, thus unconstitutional. Few of us, however, are aware of an equally potent dissenting opinion rendered in the Plessy vs. Ferguson case which gave birth to the "separate-but-equal" theory. The justice who beat Waring to the punch by nearly 60 years was John Marshall Harlan.

In declaring that there is no superior class of citizens in this country, that the Constitution is color-blind and that all citizens are equal before the law, Justice Harlan denounced the "separate-but-equal" idea as wrong.

His opinion is remarkable in that it came at a time when sentiment in America was reactionary as far as Negroes were concerned. It came at a time when the worst demogogues ran rampant through the halls of congress, shouting epithets at colored persons; it came when the picture of Reconstruction Days was still vivid in the minds of many of these legislators who occupied seats in congress, and it came at a time when most discussion of the Negro centered on a desire to return colored persons to conditions nearing those of pre-Civil War days.

What was it that Justice Harlan said that made him stand out like a giant again the tide of reaction of his day? The question before the court was: did Louisiana have the right to make Plessy, a mulatto, ride in a Jim Crow railroad car? Justice Harlan, who was appointed from Kentucky, said no. In a disent as clear and remarkable as that of Waring, Justice Harlan said in part:

"I deny that any legislative body of judicial tribunal may have regard to the race of citizens when the civil rights of those citizens are involved. Indeed such legislation, as that here in question, is inconsistent not only with that equality of rights which pertains to citizenship, national and state, but with the personal liberty enjoyed by every one within the United States.

"In the eyes of the law, there is in this country no superior, dominant, ruling class of citizens. There is no caste here. Our Constitution is color-blind, and neither knows nor tolerates classes of citizens. In respect of civil rights, all citizens are equal before the law. The humblest is the peer of the most powerful. The law regards man as man, and takes no account of his surroundings or of his color.

"It is, therefore, to be regretted that this high tribunal, the final expositor of the fundamental law of the land, has reached the conclusion that it is competent for a state to regulate the enjoyment by citizens of their civil rights solely upon the basis of race. In my opinion, the judgement rendered will, in time, prove to be quite as pernicious as the decision made by this tribunal in the Dred Scott case.

"We boast of the freedom enjoyed by our people above all other peoples. But it is difficult to reconcile that boast with a state of the law which practically, puts the brand of servitude and degradation upon a large class of our fellow-citizens, our equals before the law. The thin disguise of 'equal' accommodations for passengers in railroad coaches will not mislead anyone, nor atone for the wrong this day done.

With that eloquent plea for equal rights for all citizens, Justice Harlan set state for today's drama. It has taken nearly 60 years for his concept to permeate the hearts and minds of the nation's leaders. But at last, it appears that the opinions of Harlan and Waring may become the majority opinion.

Tis changing pattern of thinking may be seen in the reaction of many leaders to the decision of the Supreme court to postpone a ruling on segregation until the fall. Newspaper editors—in the South as well as the North—have written articles calling for a peaceful transition in the event Jim Crow in schools is outlawed. Many of them are admitting that the wake of Jim Crow is not far off. It is hoped that this will be soon in order that the stigma of second-class citizenship may be erased from American life.

School Segregation Suits

(Republished from New South, July, 1953, organ of the Southern Regional Council)

Both disappointment and relief greeted the recent announcement of the U. S. Supreme Court that it would put off, at last until next fall, any decision on public school segregation. At its session of June 8, the Court said it wanted to hear more arguments on the question when it reconvenes in October.

What does the delay mean?

Some - including Senator Walter F. George, of Georgia - saw it as evidence that the Court is prepared to outlaw segregation. ("My advice to state authorities," said the Senator, "is to make a long and complete study of the Court's decision before acting on it.") Others expressed disappointment at this further postponement of an already long-deferred decision, and at the "gradualist" tenor of the questions posed by the court for reargument. A third group welcomed the delay as providing more time for public discussion and understanding of the controversial issues involved.

In any event, attempts to anticipate the decision, on the basis of the Court's announcement, are at best only educated guesses. The Justices are obviously divided in their opinions, but in how many ways and in what numbers no one can say. Thus it is impossible to know what proportion of court sentiment is reflected by the various questions.

The first group of questions raised by the court, probe into the history and background of the Fourteenth Amendment, which declares that no state may abridge the privileges and immunities of a citizen, nor deny him equal protection of the laws. The general purpose of the Amendment is, of course, well known. It was adopted after the Civil War to safeguard the rights of the newly emancipated slaves. But, more specifically, the Court asks:

"1. What evidence is there that the Congress which submitted and the state legislatures and conventions which ratified the Fourteenth Amendment contemplated or did not contemplate, understood or did not understand, that it would abolish segregation in public schools?

"2. If neither the Congress in submitting nor the states in ratifying the Fourteenth Amendment understood that compliance with it would require the immediate abolition of segregation if public schools, was it, nevertheless, the understanding of the framers of the Amendment:

"(a) That future Congresses might, in the exercise of their power under section 5 of the amendment, abolish segregation, or future considerations, to construe the amendment as abolishing such segregation of its own force?"

SUGGESTIVE ARGUMENTS ONLY?

Attorneys for each side must seek answers to these questions that will advance their respective cases, but they can hardly relish the job. Called for is evidence of what was in the minds of the framers and ratifiers of the Amendment, and it is unlikely that anything more than suggestive arguments will be found. The Court apparently has its misgiving about finding conclusive answers, for it asks next:

"3. On the assumption that the answers to questions 2 (a) and (b) do not dispose of the issue, is it within the judicial power, in construing the amendment, to abolish segregation in public schools?"

This is familiar ground, which has been battled over since the school segregation suits were first filed. The plaintiffs, ably represented throughout by the National Association for the Advancement of Colored People, may be expected to repeat that the Supreme Court's own record in recent years demonstrates its power to construe the Fourteenth Amendment as outlawing segregation. Defense attorneys will no doubt continue to maintain that the state legislatures are the proper bodies to determine the racial pattern of education, and that the Supreme Court itself has recognized that fact since 1896, when the "separate out equal" doctrine was propounded. The choice between these two arguments is the fundamental decision the Court must make.

It is not the foregoing questions, however, that have provoked the most discussion. Public attention has been focused mainly on the Court's queries about possible courses of action in the event segregation is held unconstitutional. The Court asked:

"4. Assuming that is decided that segregation in public schools violates the Fourteenth Amendment:

"(a) Would a decree necessarily follow providing that, within the limits set by normal geographical districting, Negro children should forthwith be admitted to schools of their choice, or:

"(b) May this Court, in the exercise of its equity powers, permit an effective gradual adjustment to be brought about from existing segregated systems to a system not based on color distinctions?"

ATTORNEY GENERAL'S PROPOSAL

This preoccupation with gradual modes of enforcement comes as no surprise to those familiar with the brief filed last December by the U. S Attorney General as a "friend of the court." (See "New South," December 1952.) The Attorney General urged the Court, if it should rule against segregation, to provide for a program "to achieve orderly and expeditious transition to a non-segregated system."

The Attorney General's brief said further: "The fact that a system or practice is determined to be unlawful does not of itself require the court to order that it be abandoned forthwith. A reasonable period of time will obviously be required to permit formulation of new provisions of law governing the administration of schools in areas affected by the Court's decision. Scho authorities may wish to give pu a choice of attending one of se

al schools, a choice now prohibited. Teachers may have to be transferred, and teaching schedules rearranged..."

'ORDERLY TRANSITION'

"These are indicative of the kinds of problems which may arise in giving effect to a holding that separate but equal school systems are unconstitutional. We suggest that any relief which this Court may direct should contemplate the possibility of such problems and afford opportunity for their expeditious settlement within a specified period. Moreover, to the extent that there may exist popular opposition in some sections to abolition of racially-segregated school systems, we believe that a program for orderly and progressive transition would tend to lessen such antagonism."

Assuming that the Court decides to order an "effective gradual adjustment" to non-segregation, it asks:

"(a) Should this court formulate detailed decrees in these cases;

"(b) If so, what specific issues should the decrees reach;

"(c) Should this court appoint a special master to hear evidence with a view to recommending specific terms for such decrees;

"(d) Should this court remand to the courts of first instance with direction to frame decrees in these cases, and if so, what general directions, should the decrees of this court include and what procedures should the courts of first instance follow in arriving at these specific terms of more detailed decrees?"

Again, the roots of these questions are to be found in the brief submitted by the Attorney General for the United States Government. That brief proposed:

"An appropriate tribunal to devise and supervise execution of a (transition) program as a district court, which could fashion particular orders to meet paticular needs. On remand, that court could direct the parties to submit proposals for such a program. And if the district court so desires, it could appoint an advisory committee of lawyers and other citizens to assist it in this task. After the district court adopts a program, either side could seek review, by appeal or otherwise, it if believes the program does not conform to this Court's decision. At reasonable intervals after the program is put into effect, the parties should submit progress reports to the district court, which should have the power, if circumstances so require, to enter any further orders found to be necessay. Such a procedure should afford opportunity to responsible school authorities to develop a program most suited to their own conditions and needs..."

ALTERNATIVE PLANS

The other alternatives referred to by the Court may have had their genesis in this footnote to the Attorney General's proposal: "It is assumed that the district courts are, because of their familiarity with local conditions, the appropriate tribunals to deal with issues of relief. It may be, however, that the Court will wish to formulate more precise standards and provisions for the guidance of the district courts. In that event we suggest that several procedures are available. One would be for the Court to issue no decree at this time, but to set the matter down for argument at a later date on the question of relief. Another would be to appoint a special master to hold hearings and make recommendations to the Court on that question."

The questions posed by the Supreme Court and the suggestions set forth in the Government's brief are reproduced here at length because, together they furnish important clues to the Court's trend of thought. But it is well to remind ourselves that they are no more han clues - certainly not clear indications of how the Court will rule. Stripped of their legal language, the Court's questions boil down simply to this:

1. Does the Cupreme Court have the legal power to rule out school segregation?

2. If so, does the Court have the power to order a gradual, rather than an immediate transition to non-segregation?

3. If so, how should the transition program be worked out?

Despite all the predictions and speculations, the biggest and most important word is still if.

Race Hearing Is Postponed

Justice Department Prepares New Brief

WASHINGTON, Aug. 4 (AP)—Race segregation in public schools will be reargued before the Supreme Court starting next Dec. 7 instead of the previously announced Oct. 12.

Court Clerk Harold B. Willey, disclosing this today, said the delay came at the request of Atty. Gen. Brownell, who wanted more time for the Justice Department to work on a new brief in the cases.

Segregation practices in Kansas, South Carolina, Virginia, Delaware and the District of Columbia are involved directly in the court actions.

The Supreme Court first heard arguments last December. Then on June 8 it announced no decisions would be reached until after reargument.

Brownell's request for deferment was made in a letter which said other attorneys involved in the cases had no objections to postponement of the reargument.

The attorney general added that the questions which the court wants discussed on reargument "require intensive study of a large range of legal and historical materials, such as the understanding of the Congress and the state legislators and conventions which ratified the 14th Amendment, concerning its effect on segregation in public schools."

The 14th Amendment, adopted after the Civil War, says states may not abridge the privileges and immunities of citizens, nor deny them equal protection of the law.

The Supreme Court in calling for the reargument said it wanted to know if the highest tribunal has the power in construing the Amendment, to abolish segregation. It also asked if a ruling against segregation would require an immediate decree admitting Negro children to schools of their choice, or if a decree might be framed to permit a gradual adjustment to a public school system having no color distinctions.

The Justice Department in a "friend of the court" brief filed before the first argument last December took a stand against continued segregation in public schools.

A part of the crowd of 350 which sought seats at last December's Supreme Court hearing on school segregation.

School Cases Force Brownell St

By Chalmers M. Roberts

Post Reporter

SOMETIME THIS MONTH, Attorney General Herbert Brownell, jr., will have to make his most important legal decision since taking office, one that will affect the United States' position in the world, the future of millions of Negro citizens in the United States, and the political future of the Republican Party.

The issue is public school racial segregation, and the politics involves the GOP's efforts to build a two-party system in the South, where every politican publicly fights any change in the long-standing pattern of separate schools.

Brownell must decide what position the Federal Government will take before the Supreme Court in the litigation over the fully segregated public school systems of 17 States and the District of Columbia and the partly segregated systems of four other States. He has not yet made his decision.

Court Has Final Say

THE nine justices of the Supreme Court will have the final decision, but Brownell's stand very likely will have a major bearing on their conclusions.

Cases involving four States and the District are scheduled to be argued a second time before the high court on December 7. There is a possibility, however, that the court will postpone the arguments until the Senate has approved the appointment of Chief Justice Earl Warren. Otherwise, the new Chief Justice would be in a difficult position, even in asking a question from the bench.

The court postponed arguments last year until after the 1952 election, although it did not say, of course, that the delay was to avoid the hot breath of politics. It could be that the change from Fred N. Vinson to Earl Warren will provide the decisive vote against segregation.

Politics Inevitable

BUT Brownell cannot escape a decision that will affect politics, both national and international. And with arguments being held this winter, judgments should be reached by the end of the court term next June, not long before the 1954 congressional elections.

There is a wide belief in Washington that the way the Supreme Court handled the case last term had considerable political as well as legal merit. There is a feeling, too, that the justices properly acted with two very important considerations in mind:

1. Any court decision which would break down racial segregation, however it might be done, would have vast social and political ramifications in many States. The previous Democratic Administration was firmly on record against such segregation, regardless of the Southern wing of that party. It would be most useful to the court to know what kind of support its decision might receive from the new Administration, especially as eight of the nine justices were named by former Democratic Presidents.

2. The local problems arising from a decision breaking down segregation have not been fully appreciated in many States, where there has been a sort of "it can't happen" attitude. More public education is needed on the problem of de-segregation.

It is necessary to examine the history of the litigation over segregated public schools.

Five Questions Raised

THE STATE cases (from South Carolina, Virginia. Delaware and Kansas) and the District of Columbia case were argued before the court last December. Last June, after a half-year of pondering, the justices gave no decision but, instead, asked five questions on which they wanted further arguments, those now scheduled for December 7.

The questions concerned the history of the Fourteenth Amendment to the Constitution, about which the legal argument swirls; the judicial power of the Supreme Court to construe the amendment to abolish segregation in public schools, and, assuming there is such a decision, whether and how it could be applied gradually, rather than with a single judicial thunderclap.

The justices' questions at last December's hearing and the questions posed after six months' deliberation suggested that there was no majority for either reaffirming or flatly outlawing the half-century-old "separate but equal" schools doctrine.

There was the inference that a majority of the court favored making progress on the school segregation issue but was uncertain, or in disagreement over, how to do it. This view is reinforced by the unanimous court ruling of 1951, which had the effect of ending segregation in publicly-supported universities throughout the South. About 1000 Negroes now are attending these schools as a result of the court action.

The five questions the justices asked of both sides in the litigation are also before Brownell. The States, the National Association for the Advancement of Colored People and others who are in the cases will, of course, answer them in a way to buttress their previous positions for or against segregation.

Brownell must know the perils of his decision. American prestige abroad has been damaged because of the racial problem. Brownell knows President Eisenhower is keenly aware of this. He also knows that support by the Republican Administration for a court-directed end to segregation would be almost certain to throttle the GOP efforts to build a two-party system in the South.

The Truman Administration, through its Attorney Generals, told the Supreme Court the legal doctrine of "separate but equal" facilities for the races in the States.

And Brownell, a New Yorker who has a reputation as a consummate politician, knows the President favors States' rights

public schools is a "constitutional anachronism which no longer deserves a place in our law" and is also "an unwarranted departure, based upon dubious assumptions of fact combined with a disregard of the basic purposes of the Fourteenth Amendment, from the fundamental principle that all Americans, whatever their race or color, stand equal and alike before the law."

In a matter of such national and even international importance, it seems unlikely that Brownell would take a stand without first gaining the approval of the President.

In answering the five questions posed by the Supreme Court, Brownell could avoid taking any clear position, although that would require some tricky legal tightrope walking.

THE COURT ASKED for evidence of the intentions of those in Congress who passed the post-Civil War Fourteenth Amendment and of those in the State Legislatures who ratified it. Unless some startling facts have been turned up by the research carried on since June by the Justice Department, the States and the NAACP, Brownell will have to concede that the evidence is inconclusive.

For the Fourteenth Amendment, which decrees "equal protection of the laws" for all persons, was a marriage of idealism and political cynicism, about which many hypocritical words were said and written.

The Justice Department has walked a middle path on the research problem, giving no material to either side. Its research has been limited to the Library of Congress. The States and the NAACP have searched the library and also have delved into musty State files, employed historians and otherwise have conducted a monumental hunt for facts.

Brownell can hardly answer other than "yes" on the power of the Supreme Court to construe the amendment to abolish segregation. He certainly can answer "yes" on whether the court may order what it called "an effective gradual adjustment" from "existing segregated systems to a system not based on color distinctions."

THE FINAL QUESTION asked by the justices has to do with the legal steps that should be taken to put into effect a possible decision that segregation violates the Fourteenth Amendment. The form of this question reflects the proposals offered to the court by the Truman Administration's brief a year ago.

At that time, the Justice Department suggested the court could achieve an "orderly and reasonable solution of the vexing problems which may arise in eliminating such segregation" by allowing "a reasonable period of time" to permit "formation of new provisions of law governing the administration of schools in areas affected by the court's decision."

It was suggested to the justices that the various United States District Courts "could fashion particular orders to meet particular needs" and "direct the parties to submit proposals for such a program."

It also was suggested that "a school board might propose integration on a grade basis, i.e., to integrate the first grade immediately and to continue such integration until completed as to all grades in the elementary schools."

Use of a special master to hold hearings and make recommendations on local problems was another suggestion. In this question, the Supreme Court asked both sides and the Justice Department about these and related methods.

THE JUSTICES of the Supreme Court must know, if only from the newspapers, that any decision against segregation, however long it may take to be made effective, will be resisted vigorously in certain Southern States, including South Carolina, which is directly involved in the current litigation.

South Carolina, led by Gov. James F. Byrnes, a 1952 Eisenhower supporter, is ready to vote legislative ratification of a constitutional amendment ending its entire public school system. Georgia's Gov. Talmadge is ready to lead a similar movement. Such steps doubtless would lead to further litigation, because the envisioned new "private" schools could not operate without public tax revenue.

The heart of the problem lies in the deep South. In Delaware, Negro children already have been admitted to three schools (two as a result of the present litigation, a third voluntarily), and in partly segregated Kansas, also directly involved in the present cases, the Attorney General conceded to the court last year that "the consequences would not be serious."

Hence, the Byrnes approach actually might make the court's task easier by isolating the hard core of resistance.

The District is a special problem, being a Federal City under direct congressional control. A court decision that passed the problem to the Board of Education, as suggested by the Truman Administration, would come in the knowledge that President Eisenhower is strongly on record against segregation in Washington.

Supreme Court Blocks Ouster of Negro Student

WASHINGTON, Nov. 16 (AP).—The Supreme Court today granted a stay to prevent a lower court from voiding the admission of A. P. Tureaud jr., a Negro, as a student of Louisiana State University.

Mr. Tureaud, seventeen-year-old son of a New Orleans attorney, was admitted at the start of the fall term after a temporary injunction was issued by the United States District Court at Baton Rouge.

Later, the United States Circuit Court in New Orleans reversed the District Court on the ground the case had to be heard by a special three-judge Federal court. Mr. Tureaud's counsel asked Associate Justice Hugo L. Black to stay the Circuit Court's judgment, so that the student would not be ousted from the university.

Studied by Full Court

Justice Black turned the matter over to the full Supreme Court on Nov. 2. While the high tribunal had the question under consideration, Mr. Tureaud was notified by university officials that his registration had been canceled and he left the school on Nov. 11.

The stay of the Circuit Court's judgment has the effect of reinstating the District Court's injunction order requiring Mr. Tureaud's admission. The Supreme Court said its stay would remain effective until its final disposition of an appeal on behalf of Mr. Tureaud.

Associate Justice Stanley F. Reed dissented. He said he felt the status of Mr. Tureaud at the beginning of the litigation should be preserved pending final judgment by the Supreme Court.

Book Club Drops Plea

The court today dismissed an appeal by the Book-of-the-Month Club, Inc., which challenged an old Federal Trade Commission order restricting use of the word "free" in advertising.

The dismissal was granted on request of the club. It gave no reason but the F. T. C. recently adopted a new rule on the use of the word "free." The agency said it can be used in advertising items given without additional charge to those who buy other items, or who fulfill other specified conditions. This ruling reversed a 1948 commission requirement.

Anti-Segregation Plea

WASHINTON, Nov. 16 (AP).—Negro attorneys told the Supreme Court today the "primary purpose of the Fourteenth Amendment to the Constitution was to end segregation in public schools and similar customs "rooted in the slave tradition."

Lawyers for four groups of Negro parents—in South Carolina, Virginia, Delaware and Kansas—gave this view in a brief filed with the court. Arguments on the basis of the brief will be held early next month.

The parents have brought before the court a claim that segregation in itself is unconstitutional, regardless of what kind of schools the states provide for their children.

They have attacked the "separate but equal" doctrine under which many Southern states have operated public schools. They base their argument on the Fourteenth Amendment, which forbids states to deny any citizen "the equal protection of the laws."

The cases were argued before the court last term, but because of their tremendous importance, the justices posed further questions and ordered additional

Intent of Congress?

The questions included: Did either Congress or the states realize the amendment might abolish school segregation? Does the court have the power to so construe the amendment? If so, would Negro children be admitted to white shools forthwith or would "an effective gradual adjustment" be in order?

In reply, the Negro attorneys asserted: "whatever other purposes the Fourteenth Amendment may have had, it is indisputable that its primary purpose was to complete the emancipation provided by the Thirteenth Amendment by ensuring to the Negro equality before the law."

They said a delay "of a purely administrative character" may be involved in an order ending segregation. But, they said, there is no reason why the court should specifically order "an effective gradual adjustment."

Re Fourteenth Amendment—

Brownell quotes Alabama citations in brief urging end to school segregation

BY JAMES FREE
News Washington correspondent

WASHINGTON, Nov. 28—Atty. Gen. Herbert Brownell mentions Alabama several times in his 188-page brief filed with the Supreme Court in support of suits to end segregation in the country's public schools.

None of the Alabama citations Mr. Brownell uses mentioned either segregation or non-segregation. And this fact, he argues in the Justice Department brief, shows that the state Legislatures of Alabama and other states—in ratifying the 14th amendment to the Constitution—did not "evidence an understanding as to the reach" of the amendment.

(The 14th amendment provides that no state shall make or enforce any law that takes away the privileges or immunities of citizens of the U. S. And Mr. Brownell's main argument is that this amendment is violated by state laws that require or sanction segregation in public schools.)

THE BROWNELL BRIEF points out that Alabama, along with most of the Southern states, did not have a law providing for a segregated public school system at the time it ratified the 14th amendment in 1867. Then he cites an 1868 Alabama law to show that Alabama, along with five other Southern states, passed laws establishing school segregation within a year after ratifying the 14th amendment.

(In another part of the brief, Brownell notes that the states of the Confederacy, in order to be readmitted to the U. S. under the Reconstruction Act, had to submit state constitutions "in conformity with the Constitution of the U. S. in all respects.")

None of these post-Civil War state constitutions submitted to the Congress, Brownell stresses, provided that "inequality or segregation was permitted." And he quotes from the Alabama constitution of 1867 its general provision guaranteeing "equal civil and political rights and public privileges" (Article I, Section 2).

THE ATTORNEY GENERAL, at another point, contended that most of the early Southern opposition to the 14th amendment was due to the contention that it transferred too much power to the federal government, and not to the argument that it extended rights to the Negroes.

And by way of example, Brownell quotes Gov. Patton of Alabama (in 1866). Gov. Patton urged rejection of the 14th amendment, because a part of it, in Patton's language:

"Would enlarge the judicial powers of the general government to such gigantic dimensions as would not only overshadow and weaken the authority and influence of the state courts, but might possibly reduce them to a complete nullity. It would give the United States courts complete and unlimited jurisdiction over every conceivable case, however important, or trivial, which could arise under the state laws. Every individual dissatisfied with the decision of a state court, might apply to a federal tribunal for redress."

Some of the defenders of state-established segregated schools have voiced the hope that the Supreme Court will hold that the issue of whether such segregation should be permitted is a legislative rather than a judicial question. They suggest that the matter be left up to Congress. This thesis Mr. Brownell rejects flatly. In his brief, he states: "This is a question not of legislative policy, but of constitutional power. . . ."

THE JUSTICE DEPARTMENT brief proposes that, if its view is upheld by the high court and school segregation is declared unconstitutional, the states be given one year to comply with the new law.

However, it is suggested that the lower federal courts, which would have the responsibility of carrying out the Supreme Court mandate, could grant extensions of time should "the necessities of the situation so require."

Courier Editorials

A Magnificent Effort

WHATEVER may be the decision of the United States Supreme Court after the reargruments on the segregated school cases on Dec. 7, the fact will go down in history that people of all colors, classes and creeds made a magnificent effort in rallying to the support of the NAACP lawyers.

The Courier pointed out editorially on several occasions that aside from goodwill and good wishes, what was required, next to legal talent, was money to properly prepare the arguments of the opponents of segregated education, so ably led by Atty. Thurgood Marshall.

Since it is impossible to get anything else free in this world, it was obvious that this legal campaign would cost something, too.

Mr. Marshall's estimate of the cost was at first $32,000, but it was later raised to approximately $40,000—and the money was raised.

Next to the important fact that it was raised, was how it was raised, and here we find that people of every station throughout the country dug down and contributed.

Orphans, school children, churches, groups, organizations and newspapers (the Courier raised over $11,000) did their utmost to raise the necessary funds, and 70 per cent of the amount needed was contributed by Negroes.

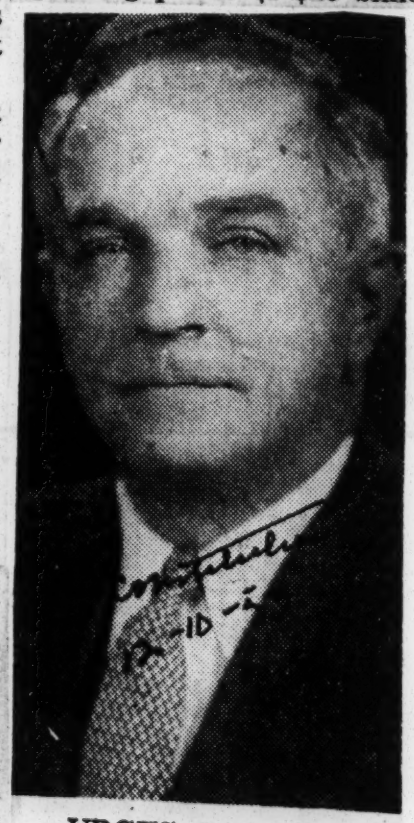
Paralleling the contribution of the general public were the contributions of the NAACP lawyers and their staff who worked long hours without extra pay, who neglected their families, who traveled over 325,000 miles and who slaved through many nights without adequate rest or food to prepare an air-tight case.

It was, indeed, a magnificent spectacle, a magnificent effort in which so many shared; from the humblest to the highest: a remarkable demonstration of solidarity.

Under the circumstances the Courier is reluctant to sound a discordant note, but we feel it necessary to point out that as much as we applaud this magnificent effort, we do not think it was magnificent enough, in view of the stakes involved.

There is probably not a Negro in the United States who does not stand to benefit, directly or indirectly, from a favorable Supreme Court decision, and yet there were millions of Negroes who did not contribute a single dime to back up this case.

When you stop to think of it, how can one become ecstatic over the contribution of only $30,000 from over fifteen million Negroes who are supposed to be unanimously opposed to segregated racial public schools, and who have a spending power of $15 billion yearly?



URGES CAUTION
Rutherford Ellis

Face Facts On Schools, Ellis Urges

A retiring member of the University System Board of Regents yesterday warned against hasty, "ill-considered" action in the event the U.S. Supreme Court bans segregation in public schools and called on the state's education leaders to face the situation "with an open mind."

Rutherford Ellis of Atlanta, a member of the board for 11 years, told the regents they are confronted with their "most serious problem."

"When it presents itself," he said, "face it with an open mind, weigh all the facts and then ask God for guidance."

COMPLETES TERM

Ellis, who represents the Fifth Congressional district on the board, completes his term this year. He will be succeeded by David Rice of Atlanta in January.

Reviewing his service as a board member, the Atlanta attorney recalled that when he was appointed in 1942 the state was faced with an educational crisis, its schools having been "discredited because of political interference."

"The administration of Gov. Ellis Arnall made the Board of Regents a constitutional body, relieving it of political pressure. I have served under three governors since then," he said, "and not one of them has ever tried to exert any pressure."

FAILED TO SELL

Ellis told the regents he thought they had failed in only one respect.

"We have failed and the alumni associations have failed to sell the University System of Georgia to the people of this state and to the people of other states.

"Too many young men and women are still going out of state for higher education. There is no reason for them to do so," he declared. "We have the finest schools in the U. S. here in Georgia."

Ellis said university system enrollment has increased in 11 years from 10,000 to 24,000 and the state, which contributed only $1,700,000 for the support of the system in 1943, now allocates over $14,000,000.

WORK APPROVED

At its December meeting yesterday, the board approved construction of a physical education building at Georgia Teachers College at Statesboro and authorized expenditure of nearly $120,000 for repairs, equipment and additions in the system.

The board, which previously had approved the GTC building when funds were available, said it had been notified by the University System Building Authority that money has been set aside for that purpose.

The regents turned down a request of Georgia Tech President Blake Van Leer that federal housing funds be sought for construction of new dormitories and approved a co-operative nurses' training program between the Macon Hospital and Fort Valley State College.

The following expenditures were approved:

1. Savannah State College: New electrical wiring system in Meldrim Hall, $16,150.
2. Valdosta State College: Completion of two dormitories and rehabilitation of old Emory Junior College campus which has been taken over by VSC, $12,340.
3. Albany State College: Installation of a new sewage system, $32,500.
4. Savannah State College: Completion of home economics building and installation of equipment, $9,000.
5. University of Georgia Medical School: Equipment for Murphey and Dugas Annex, $54,794.
6. Middle Georgia College: Building repairs, $3,775.

'reat Debate' egregation loses Quietly

Nine Justices Weigh Which Side Is Right In School Arguments

By DOUGLAS B. CORNELL

WASHINGTON, Dec. 9 (AP)—The great debate on whether segregation of white and Negro children in public schools violates the Constitution came quietly to a close today in the Supreme Court chamber and in conferences among themselves, the nine justices must determine who is right:

1. The states which have said cial segregation for their millions over and over that segregation is of children in public schools. Three entirely legal if Negroes have as other states permit it.

good schools as whites, or 2. Substitutes Ready

yers for Negro parents who ar- Mostly they are in the South, gued it is unconstitutional under where several states already are any circumstances and a holdover considering substituting private for from the days of slavery. public schools if the Supreme Court

The epoch-making decision, with its strikes down segregation. Missis-far-reaching legal implications,

sippi took a first preliminary step yesterday, as Georgia had before.

Seventeen states and the District of Columbia have compulsory racial segregation in public schools now before the Supreme Court and the states should be left free to handle the issue in their own way through their own legislatures.

"The problem," said H. Albert Young, Delaware attorney general, "obviously is a legislative one and not a judicial one."

Summing up for the Negro side, Thurgood Marshall, New York, Ne-

Arguments End

Three days of arguments came to an end today with Delaware taking its place beside Virginia, South Carolina and Kansas in contending the Supreme Court has no authority to end segregation and the issue in their own way through

gro attorney and counsel for the National Association for the Advancement of Colored People (NAACP), told the justices assembled behind their long mahogany bench:

"The real question in these cases is if the states today do or do not have the power to use race and race alone as the basis for segregation. Our theory is that the states have been deprived of that power. On that we submit these cases."

"Any rebuttal?" Chief Justice Warren inquired.

"No rebuttal," Young replied.

Without a pause, the court began listening to arguments in another minor, unrelated case. Spectators began filing out.

Eleven hours had been set aside for the arguments, but less than nine were used.

For the most part, the debate in the Virginia, South Carolina, Delaware and Kansas cases whirled around the 14th amendment to the Constitution which says no state may deprive any person of due process or equal rights under the law because of race.

Fifth Amendment

In the fifth case, involving the District of Columbia, it centered on the 5th Amendment that declares no one shall be "deprived of life, liberty or property without due process of law."

Attorneys for Negro parents argued that the 14th Amendment bars segregation under any conditions, and Congress and the states so intended when they put it into effect soon after the Civil War. Lawyers for the states took an exactly opposite stand.

In the questions the justices asked and in those they had submitted formally in ordering a reargument of the cases, the Supreme Court had shown some concern over whether it actually has the power to outlaw segregation. Again, the opposing attorneys were completely at odds.

The Eisenhower administration, through the Department of Justice, was asked by the court to present its views. It contended the court has not only the power but also the duty to wipe out segregation.

CIO Opposes Use Of Gradualism

Opinion Divided On Implementation

WASHINGTON, D. C. — If segregated schools are found to be unconstitutional, they should be abolished at once. Such was the tone of a 17-page brief filed in the U. S. Supreme Court here Tuesday in the current public school segregation case.

About the same time the State of Virginia, the last to file its brief, urged that the timetable for "amalgamation" in the public schools be left to the Federal District Court at Richmond, should segregation be outlawed.

As a "friend of the court" the CIO, represented by Arthur J. Goldberg, let its opinion on the current question be known. In part the CIO brief read: "If the policy of non-discrimination or non-segregation is put into effect concurrently with its announcement, and if it is enforced with firmness and decisiveness, there is every likelihood that the policy will be generally accepted and that any substantial degree of interracial friction will be avoided."

According to the brief, experience has shown that a union or an employer can put a non-discrimination policy into effect if it does so "forthwith" and avoids gradual adjustment or any other "formula of indefinite postponement."

"The bulk of the people," the brief continues, "in any community or plant or office are influenced in their attitudes on racial discrimination by the current practice in the community. . . if the practice is changed and if the change be made unequivocally, they accept the new practice and their attitudes come to reflect it.

"Thus traditional southern attitudes on racial segregation largely mirror, according to our experience, simply the prevailing practices, rather than deeply or strongly held individual convictions. Once the practice in changed, beliefs as to what the practice should be will change too."

Virginia reiterated its stand that segregation in the public schools is constitutional.

In part the brief states, "Segregation by race in Virginia public schools at this time not only does not offend the Constitution of the United States but serves to provide a better education for living for the children of both races.

"We do not suggest any particular time for the abolition of segregation because that should be determined by the court below after plans for amalgamation have been prepared and submitted to that court for approval by the local school authorities."

Decrying any attempt to present to hastily end segregation the Virginia brief states "No matter how it is done, to abolish school segregation by court decree will result in difficulties that can hardly be overestimated.

Segregation in Schools Called Illegal by U.S.

WASHINGTON, Dec. 8 (UP).—The Eisenhower Administration said today it agreed fully with the Truman Administration that public school segregation was unconstitutional.

Assistant Attorney General J. Lee Rankin told a Supreme Court hearing on the politically explosive issue that "segregation in public schools cannot be maintained under the 14th Amendment" to the Constitution.

Rankin made his flat statement after some justices expressed curiosity over the "friend of the court" brief filed recently by Attorney General Herbert Brownell, Jr.

ONLY ONE ANSWER

Justice William O. Douglas said the brief went "no further than saying we can decide this case either way."

"No," Rankin replied. "The court can find only one answer . . . When they stand before this court and say that the only reason for segregation is color, the court must say that the 14th Amendment does not permit this to happen."

Justice Robert H. Jackson asked Rankin if he stated the department's position.

Rankin replied that he did and that the new Administration agreed fully with the position set forth in the brief filed by James P. McGranery, former President Truman's Attorney General.

YEAR'S GRACE PROPOSED

Brownell's supplementary brief filed with the court touched only on specific questions asked by the tribunal. However, it in effect embraced the original brief filed before initial arguments on the case.

Rankin told the court, now hearing re-arguments on the issue, that States should be given a year to present to lower courts a plan for handling integration of white and Negro schools. He emphasized that lower courts should not pass on the wisdom of the plan, but only on whether it would satisfy constitutional requirements.

But Justice Jackson said the Government had failed to suggest any criteria for lower courts to apply when integration plans were presented. He reminded Rankin that "local customs would still perpetuate segregation in school districts where they really want it."

LOCAL DECISIONS

Two Southern attorneys urged the tribunal to show "judicial restraint" and leave the question of public school segregation to State Legislatures.

Attorney General T. Lindsay Almond of Virginia and T. Justin Moore, representing the Prince Edward county, Va., school board, said the issue was not one which properly could be settled in court.

Moore said the matter should be left to Legislatures, which "are as much a guardian of the people as are Federal Courts." Almond said the Negroes were "asking this court to amend the Constitution and to go further than Congress ever intended."

The hearings involve five suits being pushed by the National Association for Advancement of Colored People against school boards in Virginia, South Carolina, Delaware, Kansas and the District of Columbia.

SELECTIVE SERVICE CITED

But attorney Thurgood Marshall of New York, representing the Negro parents, reiterated that the high court "must" outlaw racial segregation.

He asserted a Selective Service pamphlet said racial discrimination—"educational and otherwise in the South"—almost caused the country to lose one war.

"I gather from the recommendation that unless changes are made, we'll lose another one," Marshall said.

Marshall conceded that administrative problems would arise if segregation was outlawed and said the States should have sufficient time to meet them, but not more than one year.

SEPARATE BUT EQUAL

Moore challenged the Negro arguments that the traditional concept of "separate but equal" facilities was contrary to past Supreme Court opinions and violated the Constitution.

He said the doctrine was as valid now as when it was first drafted shortly after Negro slaves were freed following the Civil War.

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School Cases Include More Than Issue of Segregation In Districts, Says Tobias

By Channing H. Tobias, Chairman ,Board of Directors, NAACP

New York.—The five public school segregation cases scheduled for re-argument before the United States Supreme Court beginning Monday, December 7, involve much more than the issue of segregation in the particular school districts in South Carolina, Virginia, the District of Columbia, Kansas and Delaware. Technicially, of course, the Court will render its decision only on the cases before it. But the implications of the Court's ruling extend far beyond considerations of what is to be done in these specific cases.

THURGOOD MARSHALL

At ultimate stake is the future of the anachronistic system of segregation not only in education but also in all other phases of the public life of the nation. We of the National Association for the Advancement of Colored People have long maintained that segregation is a divisive and anti-democratic device designed to perpetuate an obsolete caste system which flatly contravenes the basic ethical concepts of our Judaeo-Christian tradition.

We have held that segregation per se is unconstitutional. Should the Court uphold this point of view it could mean that all laws requiring or permitting racial segregation in schools, transportation, recreation, shelter, and public accommodations, generally, would ultimately be invalid.

To Argue

When Thurgood Marshall and the other NAACP lawyers associated with him address the nine justices of the country's highest tribunal they will argue the merits of the cases before the court. But implicit in their argument will be a challenge to the validity of all legislation which separates one American from another on the totally irrelevant basis of race, color, religion or national origin. They will contend, at least by implication, that integration cannot be a halfway measure. Our nation cannot remain half-integrated and half-segregated today any more than it could continue half-free and half-slave a century ago.

Cases Recognized

We, of course, do not know what decision the Court will render after hearing the arguments of our lawyers, the attorneys for the several states, and the spokesman for the United States Government. We do know that the Court recognizes the importance of these cases. This was clearly indicated by the order to reargue the cases, the requests that the Attorney General present the government's views of tse issue, and the five vital questions posed by the Court.

EDUCATION

The importance the NAACP attaches to these cases is demonstrated by the extensive research our legal department has undertaken in preparation for the argument. Mr. Marshall has secured the cooperation of more than 130 lawyers, law professors historians, and other social scientists in digging up every related fact in connection with this paramount issue. Never before has such an array of scholarship and talent been assembled to prepare for a civil rights case. When they face the Court our lawyers will be fully confident of the validity of their arguments, the accuracy of their information and the soundness of their theory of law.

Jim Crow dvocates

Likewise the advocates of continued segregation are aware of the significance of these cases. To argue the Clarendon County case, the State of South Carolina has retained the services of John W. Davis, the eminent constitutional lawyer and onetime unsuccessful Democratic party nominee for President.. They have also the attorneys generals of their respective states and private lawyers to represent them at the expense of the taxpayers, Negro as well as white. They are doubtlessly prepared to make the most of their arguments.

The Department of Justice has assigned a staff under the direction of an Assistant Attorney General to prepare the government's argument. What position the government will take is not positively known at this writing. However, it is generally believed that the government will again contend that segregation is unconstitutional just as the Department argued last year at the hearing on this issue. It seems most unlikely that the new Republican administration will take a less forthright position against segregation than that taken by the preceding Democratic adminisration.

Cour Has Power

Washington, D. C.—The justice department told the supreme court Friday that the court is fully empowered to strike down racial segregation in public schools.

In response to an invitation of the court, where five school segregation cases are pending, Atty. Gen. Herbert Brownell and his chief aides filed a brief asserting that the 14th amendment to the Constitution "compels a state to grant education to all its people the benefits of public equally, without regard to differences of race or color."

The brief said the question is not "whether there is equality as between schools," adding: "The Constitution requires that there be equality as between persons."

PUBLIC SCHOOLS

Implementing Supreme Court Decisions

The Oklahoma Conference of Branches has been busy this year attempting to implement and give life to recent decisions of the Supreme Court. Few people realize that when the court speaks; when it spells out the correct meaning of the law and the statutes, strenuous labors must begin on the part of those who sought interpretation to see that the court's orders are carried out and respected.

Too often reaction is rebellious, as it exists down in Georgia and South Carolina, where the governors of these two commonwealths are today saying, "To hell with the Constitution of the United States," and in such instances these Fifth Columnists cause continued difficulties.

The same thing has occurred right here in Oklahoma City. Everyone knows quite clearly the Supreme Court has outlawed restrictive covenants, but despite this fact rebellious white citizens ignore the action of the high court and seek to substitute terrorism and threats of violence to perpetuate an invisible government which still says it will continue to deny Negroes the free ownership and occupancy of property. Somehow, some way, we believe the Supreme Court could with considerable ease discover the seeds of subversion in such conduct. If our way of life is ever overthrown we believe it will be effected from within, rather than from without. Did you ever hear of Haman's gallows? History records an incident where a man prepared for the hanging of another man only to die by the same noose he fixed for others. Those who continue to ignore law and order in this country may be modern Hamans right here in our very midst.

Now the State Conference of Branches, NAACP, which will convene next week in Wewoka, will be busy for two days reviewing what it has been doing this year, attempting to help Negroes in Oklahoma secure their rights under the law.

Down at Norman during the past twelve months the Conference saw to it that Negro girls were installed in the Quadrangle, where they now reside. Under the university rules single girls must be directly and constantly under the supervision and discipline of dormitory life. Attempt by minor officials was made to force Negro girls to live in the undisciplined pre-fabs, provided for married couples, but to the honor and credit of the administrative family down at Norman this matter was properly adjusted when this at-

tempted injustice was called to the attention of the dean of admissions.

On the other hand this matter will still have to be worked out over at the A. & M. college. Hitherto, and during the life of Dr. Bennett, liberality respecting the Supreme Court's ruling on integration, the A. & M. management was far more advanced and enlightened than at Norman. But with the death of Dr. Bennett new rules bobbed up, and today regular term students are denied dormitory facilities except in one structure, which was hurriedly arranged for at the beginning of the current semester. Attorneys for the NAACP are planning a course of action in this matter which has not yet reached fruition.

Another rule that was destroying the opportunity of high school students to secure educational advantages at Norman, was a regulation forcing Negroes to attend one year at Langston if they planned a course in engineering. This rule has been completely wiped out following representations made to the University by the Oklahoma Conference, and five high school graduates from Douglass high school in Oklahoma City are now taking engineering courses at the University of Oklahoma.

During the year a white religious college operating in Oklahoma City requested information through the NAACP whether the Supreme Court decision would permit enrollment of students from Africa. The matter was taken up with the national legal staff which stated in a formal opinion the college would have this right under the law.

The Oklahoma Conference this year has also been investigating the rights of a little Negro girl up in Major county who the school board at Cleo Springs demands must go fifty miles to Enid and return each day, a distance of more than 100 miles to attend school. Three trips have been made to Fairview in attempt to adjudicate this matter, despite the fact this girl and her parents are stalemated and denied their rights at the moment. It is the opinion of the Oklahoma Conference of Branches that the rule laid down by the high court respecting graduate training for Negroes in Oklahoma is equally applicable in the Major county instance. Plans are being worked out to make a court test of this situation. It goes to show how prejudiced reaction brutally and wilfully attempts to destroy the future of a black girl in her attempt to secure an education.

Perhaps the most recent effort to escape from the decision of the high court has developed in Oklahoma City, where suits have been filed to force Negroes from homes recently purchased. Those who filed these decision are relying upon an idea they have that the Negro home owners have conspired to destroy property values in Creston Hills addition to Oklahoma City, and in the other case resort is made to a revisionary clause in an outlawed restrictive covenant.

The Oklahoma City branch has this matter well in hand and without question will be able to dispose of this matter quickly the day the proponents of this action appear in court. Depositions have already been taken which are damaging to the plaintiffs. But, however, for the good offices of the NAACP, representing the combined strength of the Negroes of this state, these humble property owners who have put their life's savings into the property in question might be financially destroyed and have to vacate their properties.

Is Administration First Ruling In Heated Fight

Five States Have Cases On Docket Before Justices

WASHINGTON (UP) — The Justice Department told the Supreme Court today that the court has the power to outlaw segregation in public schools.

In a 188-page brief filed with the high court, Atty. Gen. Herbert Brownell Jr. told the court it is its duty and within its authority to see to it that there is no discrimination against anyone on account of color.

The Supreme Court has under consideration five cases which challenge the constitutionality of segregation in public schools. They involve the school systems of Virginia, South Carolina, Delaware, Kansas and the District of Columbia.

Administration Stand

The Justice Department's brief represented the Eisenhower administration's first official expression of its attitude on the issue of segregation in public schools.

The department intervened in the case during the Truman administration and argued that segregation is unconstitutional.

President Eisenhower told his news conference Nov. 17 that he would be conferring regularly with Brownell before the attorney general submitted the segregation

New Arguments Monday

Last June, the court ordered the cases re-argued and asked the parties involved to submit additional briefs answering specific questions. New arguments are scheduled to start next Monday.

One of the questions asked by the court was whether Congress or the states intended in 1866—when the 14th Amendment was ratified—to outlaw school segregation. The 14th Amendment forbids states to deny citizens "the equal protection of the laws."

It also asked whether the courts had power to decide the question of segregation.

Gave Negroes Equality

In reply to these questions, the Justice Department told the court that the "primary and pervasive purpose" of the 14th Amendment "was to secure for Negroes full and complete equality before the law and to abolish all legal distinctions based on race or color."

The department said the legislative history of the amendment in Congress and in state legislatures does not prove conclusively that an end to school segregation was contemplated by framers of the amendment.

But the brief said the courts always have decided whether certain state practices c5)4 gngng5illegal discrimination under the law.

Points To State Laws

The Justice Department also belittled the argument that the fact that segregation was instituted in school systems in some states immediately after approval of the 14th Amendment proves the constitutionality of such systems.

The department said "it would be idle" to speculate now whether segregation was constitutional immediately after the Civil War.

"School segregation was not generally compulsory then as it is now," it said.

The question is not whether conditions existing then may have justified segregated schools "practically and legally," the department said.

Question Of Rights

"The question rather," it said "is whether under the far different conditions existing today, a legal requirement that colored children must attend public schools where they are segregated solely because of their color deprives them of their constitutional right to equality in the enjoyment of public educational advantages and opportunities."

The department noted the particular types of questions upon which the courts have refused to decide in the past on grounds they were under the jurisdiction of Congress or the executive branch rather than the courts. But it said that none of these questions is involved in the school segregation case.

"The principal responsibility for vindicating rights secured by that (14th) Amendment has properly been assumed by the judiciary."

No More "Political"

It said "a decision that racial segregation in public elementary and high schools is unconstitutional would be no more 'political' or 'legislative' than those which have ended segregation in higher levels of public education."

Another question asked by the Supreme Court was whether an end of segregation could be decided by the courts in such a way as to bring about a gradual integration of the two school systems.

The department said that should the Supreme Court outlaw segregation, its decisions would be under the jurisdiction of the various district courts who could enforce the decision in a way best to promote the public interests and to provide justice for all.

Scuffs States "Antagonism"

The department also rejected the argument that there will be "popular antagonism" in the states affected about the elimination of segregation "arising from a traditional hostility to the mingling of the races."

Brownell Brief Infuriates Dixie

By ETHEL PAYNE
(Defender Washington Correspondent)

WASHINGTON — The Department of Justice last week called upon the United States Supreme court to use its authority to end racial segregation in public schools.

The 188 page brief filed last Friday by Atty. Gen. Herbert Brownell is looked upon as an official barometer of which way the trend will go in the five cases testing the validity of segregation in the nation's tax supported institutions of learning.

The brief gave specific answers to the five questions raised by the highest court last June and set off a storm of protest and controversy on the part of die-hard Dixie racists. Rearguments in the cases have been set for Dec. 7.

The document said that the core of the case rested on the distinction between equality between school as against equality between persons.

The brief concluded that the court has the authority to outlaw segregation in the District of Columbia under the Fifth Amendment to the Constitution which provides that no person shall be deprived to his rights by undue process of law.

In the other four cases involving South Carolina, Kansas, Delaware and Virginia, the department is basing its contention that segregation is illegal under the 14th amendment to the Constitution.

The high court had raised the five questions over the legislative history and intent of the 14th amendment.

The brief declared that the primary purpose of the 14th amendment was to secure for Negroes full and complete equality before the law and to abolish all legal distinctions based on color.

It said that material relating to the ratification of the amendment in various states is too scanty and incomulete to justify any general understanding as to what effect the amendment would have on school segregation.

The brief also said that is is within the judical power of the court to direct such relief as will be effective and just in eliminating existing segregated schools.

Finally, unconstitutional it should order the lower courts to carry out the decision as rapidly and expiditiously as possible.

Thurgood Marshall, general counsel of the NAACP which has already filed its voluminous brief in the case, declined to comment on the Brownell brief, but district lawyers believe that the Government is so clear cut and decisive as to leave no doubts on the government's position in the case.

The oral arguments will run through approximately 11 hours, allowing two hours for each case and one hour for the government presentation.

The briefs for the opposing sides have not all yet been filed Atty. Gen. Brownell announced that the oral arguments for the Government will be handled by Asst. Atty. Gen. J. Lee Rankin.

Dixie Scores Brownell For School Brief

WASHINGTON--The administration's request that the Supreme Court outlaw public school segregation has brought a storm of protest from Southern government officials and educators, particularly in those states which backed president Eisenhower in 1952.

In a 188-page brief filed with the tribunal Friday by Atty. Gen. Herbert Brownell, the administration said it is the duty of the high court and within its power to outlaw discrimination of any kind against anyone because of color.

The Supreme Court is considering five cases challenging the constitutionality of public school segregation in Kansas, Deleware, South Carolina, Virginia and the District of Columbia. The new arguments are scheduled to begin Dec. 7.

The first angry Southern reaction to the Brownell brief came from Rep. Gathings (D.-Ark.), who condemned the brief as an attempt to circumvent congressional will. He called on Congress to pass legislation barring court action aimed at ending race segregation in Southern schools.

While many state and education leaders stuck within their policy of keeping mum on the school segregation issue, others broke the silence with loud blasts at Brownell and Eisenhower.

Gov. Herman Talmadge said that the administration's policy "will be a tremendous blow to the Republican party in the South."

Talmadge, who recently said he will "stand or fall" as governor on a promise to maintain segregation in the state's schools, added: "I think the attorney general's position as expressed in the brief will solidify the South behind the Democratic party."

Governors Hugh White of Mississippi and William Umstead of North Carolina had "no comment' when informed that the Eisenhower administration advised the Supreme Court to abolish segregation in public schools.

They followed a pattern set by South Carolina's Gov. James Byrnes, now serving as a delegate to the United Nations session in New York, who said earlier this month that he did not think it proper to comment on the pending issue.

DISGUST IN DIXIE

Alabama Lt. Gov. James Allen said that many Southerners will be disillusioned by Brownell's statement on school segregation.

Allen, who will be a gubernatorial candidate next year said: "I think our people want to see all citizens have equal educational opportunities, but I find little or no agitation in Alabama for abolition of segregation."

Gov. Robert F. Kennon of Louisiana believes the Supreme Court will still decide that the issue over schools "is not segregation, but that schools are a state function." He added:

"No brief filed by anyone will influence the high court's decision when it does decide that schools have been a state function traditionally, over the years, and shall continue to be a state function."

Georgia state school superintendent, Dr. M.D. Collins, said it would take "from now to judgement day" to make any transition from segregated to non-segregated schools in Georgia."

Dr. G.H. Ferguson, director of the Division of Negro Education in North Carolina, said "you can push but you can't push too fast."

TWO EDUCATORS BALK

Ferguson added that if the court abolishes segregation, then "there's not much we can do about it, but I hope they give time for gradual adjustment."

Two Negro educators of North Carolina declined to comment at length upon segregation in public schools, but a third said the South would "adjust itself heroically to a gradual change."

Dr. Harold L. Triggs, president of St. Augustine's college, Raleigh, and Dr. Alphonso Elder, president of North Carolina college in Durham, said they preferred to wait for a definite Supreme Court decision.

However, Dr. W.R. Strassner, president of Shaw university, Raleigh, declared: "The South will adjust herocially to a gradual change. There will be no noticeable change overnight."

A prominent Birmingham Negro attorney, Arthur D. Shores, who has argued several segregation cases before the Supreme Court, called Brownell's statement, "commendable," and said:

"If we are going to continue to lead in a world where the darker races comprise three-fourths of the population, we must afford complete democracy here at home."

End Segregation In Schools, Urges Brownell Aide

By DARRELL GARWOOD

WASHINGTON, Dec. 8 (INS)—The U.S. government urged the Supreme Court today to declare racial segregation in public schools unconstitutional and end a practice followed by many states for more than a century.

Assistant Attorney General J. Lee Rankin made the sweeping plea when Associate Justice William O. Douglas called upon him to state the federal government's precise stand on the explosive issue of segregation.

Justice Douglas said the "friend of the court" brief filed recently by Atty. Gen. Brownell went "no further than saying we can decide this case either way."

Rankin replied: "It is the position of the Department of Justice that segregation in public schools cannot be maintained under the 14th amendment to the Constitution."

Associate Justice Robert H. Jackson commented that should the court declare an end to segregation it might touch off "a generation of litigation."

Jackson suggested that a lawsuit might result in every school district in the land.

RANKIN'S PLAN

Rankin told the court, now hearing reargruments on the issue, that states should be granted a year to present to lower courts a plan for handling integration of white and Negro schools. He emphasized lower courts should not pass on the wisdom of the plan, but only on whether it would satisfy constitutional requirements.

But Justice Jackson said the government has failed to suggest any criteria for lower courts to apply when integration plans are presented. He reminded Rankin, "Local customs would still perpetuate segregation in school districts where they really want it."

The Justice department official said that the Eisenhower administration "adopts the views expressed" to the court last year by James P. McGranery, attorney general under former President Truman.

ILLEGAL BIAS

McGranery told the court at that time, "Compulsory racial segregation is in itself an unconstitutional discrimination.

"Schools or other public facilities where persons are segregated by law, solely on the basis of race or color, cannot in any circumstances be regarded as equal."

Rankin insisted that the Supreme Court had the "power and duty" to abolish segregation. He thus went beyond the written briefs filed 10 days ago by Atty. Gen. Brownell, who allowed arguments of the previous administration to stand "without reexamination."

Rankin presented the government's case as a "friend of the court" in the historic battle to decide the fate of the separate school system mandatory in 17 states and the District of Columbia and covered by local option laws in four other states.

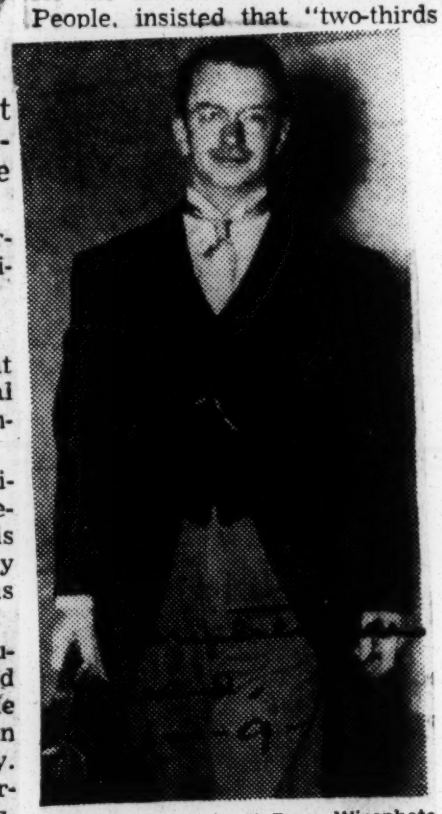
Earlier, Virginia Atty. Gen. J. Lindsay Almond and his associate counsel, T. Justin Moore, urged the court to exercise "judicial restraint" and leave the explosive problem to the states for an eventual solution.

Rankin was sharply questioned by Associate Justice Jackson, who asked whether "our representative institutions have failed," because Congress and the courts have not enforced integrated school systems.

The assistant attorney general replied: "In our view, both of you have a responsibility and neither can give up that responsibility to the other."

Rankin declared that since there is "conflicting" evidence as to the intent of Congress toward segregation when it enacted the 14th Amendment to the Constitution in 1866, the court must decide the issue.

The Justice Department official addressed the high bench after Thurgood Marshall, representing the National Association for the Advancement of Colored People, insisted that "two-thirds of the Negroes in the United States are compelled to submit" to segregated education.



Associated Press Wirephoto

ARGUES U.S. CASE

J. Lee Rankin

Marshall said he interprets statements by U. S. Selective Service chiefs to mean that America may lose a war unless the question of racial discrimination is solved.

The attorney demanded that the court not only order integrated schools but stipulate that the transition must be accomplished within one year.

Arguments in the segregation cases which specifically involve five states and the District of Columbia are expected to be concluded Wednesday. But there is little possibility that the court will rule until sometime next year.

Talmadge's Plans For Segregated Schools Approved

Senate Gives Safeguards Speedy Okay

By ALBERT RILEY

Georgia lawmakers gave final legislative approval yesterday to two Talmadge proposals designed to preserve segregation in the schools of this state, regardless of any U.S. Supreme Court decision.

This action came as the Senate overwhelmingly adopted and sent to the governor these House-approved administration resolutions to:

1. Set up a commission to study the problem of maintaining separate schools for whites and Negroes in the event the U.S. Supreme Court outlaws segregation.

2. Call for a vote of the people on a constitutional amendment that would enable the state to abolish its public school system and substitute grants of educational funds to individual children.

GRIFFIN PLEA

Spurred on by an unprecedented appeal from the chair by Lt. Gov. Marvin Griffin, the Senate adopted the study commission resolution unanimously and recorded only two dissenting votes against the proposed constitutional amendment. The vote on the amendment was 51 to 2.

Sen. William T. Dean of Conyers, normally an anti-Talmadge leader, joined administration forces in speaking for the constitutional amendment, declaring, "I hope and pray to God we will not have mixed schools in Georgia."

Ignored by the Senate were warnings from Sen. Everett Millican of Atlanta and Sen. E. F. Griffith of Eatonton that the action is too hasty and ill-timed since the Supreme Court has not yet handed down its decision.

AVERT HASTE

Millican and Griffith declared they are as strongly opposed to mixed schools as anyone, but cautioned against hasty action ment after speaking against it. So did Sen. Hugh Cheek of Butler who questioned the wisdom of the amendment and joined Millican in expressing fear that it might destroy the teacher retirement system.

Millican was defeated also on an attempt to modify the constitutional amendment resolution when he sought to insert a clause that would prevent state funds from being spent on church schools, declaring that as a Baptist he is unalterably in favor of continued separation of church and state. His motion lost, 34 to 10.

EXPLAIN VOTE

Many of the senators paraded to the microphone to explain their votes during the roll call. Some of them, like Sen. Herbert Moon of Americus, voted for the resolution but reserved the right to vote against the constitutional amendment in the general election.

Sen. Iris Blitch of Homerville said she was voting for the measure because "it is not too early but a little bit late." She declared the entire attack on segregation is backed by New York's Gov. Thomas E. Dewey and is a "sinister pattern" implemented that might destroy the public school system before the U.S. Supreme Court has even decided the segregation issue. There will be plenty of time for the legislature to convene in extra session to decide on a proper course of action after the court rules on the question, Millican argued.

The Atlantan also said he doubts that the high court will order precipitous action by the states even if it does ban segregation.

But Sen. Robert H. Jordan of Talbotton replied that the constitutional amendment would be only "permissive" and argued, "We're almost too late now."

Meanwhile, in a speech at Decatur, former Gov. Ellis Arnall declared it is "exceedingly unlikely" that the U.S. Supreme Court will outlaw segregated schools in Georgia and said it would be "tragic for the state to junk its public school system."

ARNALL TALK

Later in another speech before the Buckhead Fifty Club, Arnall said the state constitution itself is a firm school segregation bulwark and Georgians should not be stampeded into "giving away their birthright of free schools."

Sen. Millican, who had supported the resolution creating a study commission on the segregation question, introduced another resolution that would require Georgia's public school system to be maintained and operated until the Supreme Court should hand down a segregation decision specifically affecting the state of Georgia.

He thus continued his battle to preserve the public school system even after his overwhelming defeat on the constitutional amendment.

OPPOSE RIDER

Only Sen. James I. Parker of Cedartown joined Millican in voting against the amendment. Sen. Griffith voted for the amend-

by U.S. Atty. Gen. Herbert Brownell's brief before the Supreme Court that asked for an end to segregation within one year.

Sen. Dean drew applause from the Senate when he spoke for the resolution, declaring that he was proud of Gov. Talmadge's consistent fight against mixed schools and that "now is the time to stand up and be counted" on the issue. Dean blamed the fight against segregation on "outside agitators, race-baiters, vote getters and do-gooders."

State Won't File Brief on Segregation

Georgia has changed its position and decided against filing briefs in the segregation cases now before the U. S. Supreme Court, Atty. Gen. Eugene Cook said yesterday.

If Georgia filed briefs as friend of the court, Cook said, "we would be morally bound to abide by an adverse decision."

He said that since Georgia is not involved in the present case, a decision outlawing segregation in public schools "would not necessarily bind this state in some points."

Cook said several other Southern states also decided against filing briefs in the cases.

PUBLIC SCHOOLS
GEORGIA BRIEF

Educators rap Talmadge plan for private schools

ROME, Ga. (NNPA) — The Talmadge proposal to keep segregation in Georgia schools even if the United States Supreme Court should outlaw it in public school systems has been scathingly criticized by two educators — both advocates of segregation.

Kankakee Anderson, school superintendent in Polk county and former president of the Georgia Education (Teachers) Association, called the proposals "silly and monstrous."

Stunned At Proposal

J. Harold Saxton, executive secretary of the GEA, said that while the GEA itself had taken no action, he himself "had never been more concerned or more stunned and benumbed."

Saxon said it was inconceivable that anyone should propose to do away with the public schools and revert to private schools as the proposal of Governor Herman Talmadge would do.

Would Be Calamity

Anderson noted that it had taken 100 years to build up the public school system. He declared that if the Talmadge proposal was put into effect, "it would be the greatest calamity that ever befell the people of Georgia."

"I can't think of anything worse for the people of this state," he added, "than to have public education abolished."

"Harmless Sounding"

Anderson called the Talmadge proposal of a constitutional amendment, authorizing grants to citizens for educational purposes "harmless sounding," but said it would give the General Assembly "the authority to grant to anyone the taxes collected in this or any other county."

Anderson added: "I don't think any of us know what the answer to the Supreme Court decision will be. In fact, we don't know what the decision will be. I don't know what we will do. But if it is illegal to maintain segregation in the public schools, it will be illegal to maintain segregation in the private schools."

Talmadge Plan On Segregation Passes Senate

Advertiser
L-28
Montgomery
Dec. 1
Wed. 12-2-53

ATLANTA, Dec. 1 (AP)—Gov. Herman Talmadge's plan to keep segreation in Georgia's schools was pushed through the Senate today, completing legislative action.

There was no opposition to the bill establishing a study commission, but several of the senators spoke against the proposed constitutional amendment which would allow grants to citizens for education.

When it came to a vote, however, only Sens. Everett Millican, of Atlanta, and James Parker ,of Cedartown, voted against the measure. The final tally was 51-2.

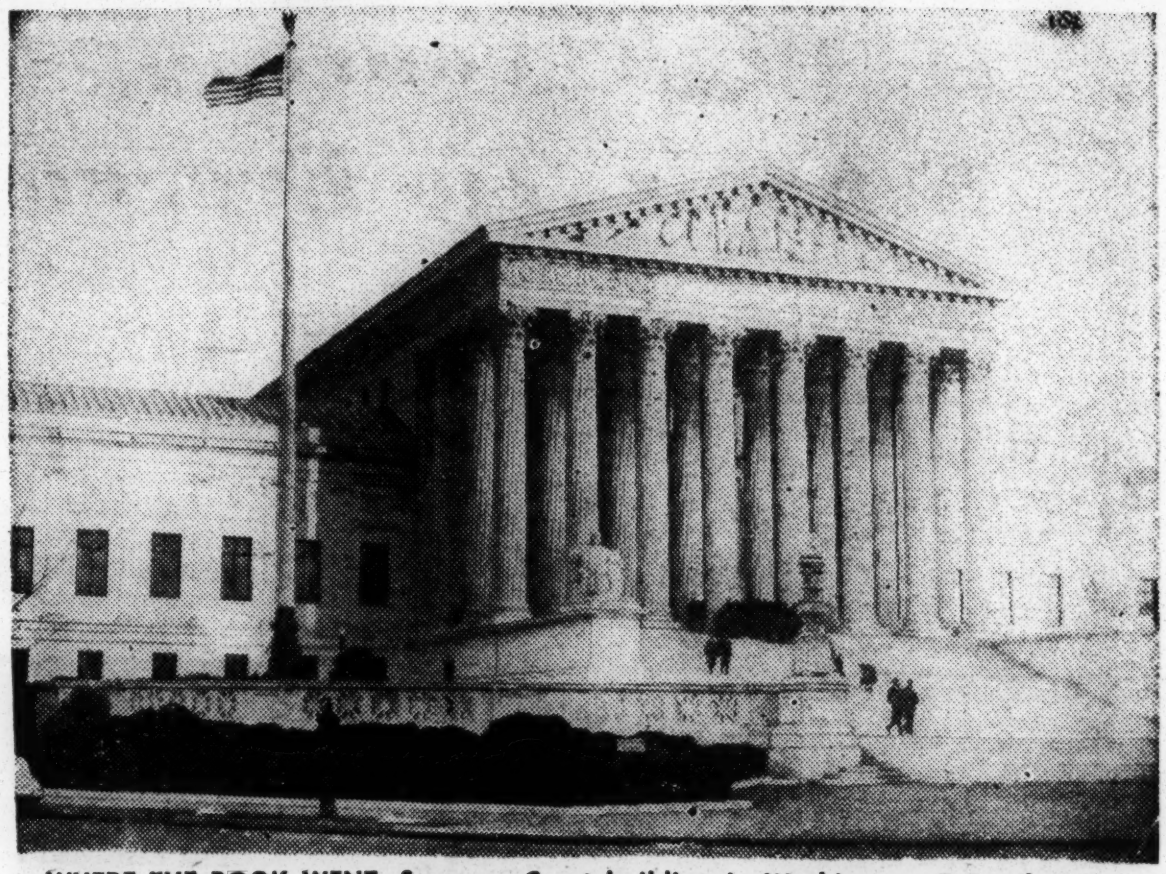
The constitutional amendment now will be presented to the people in the 1954 general election for ratification or rejection. In allowing grants of tax money to citizens the amendment, in effect, would set up private instead of public schools.

Thurgood Marshall, chief counsel of the NAACP who directed the compilation of the $40,000 book is so sentimental that he sends Christmas cards to dogs with whom he is acquainted. He makes a great show of disliking work or physical exertion but has been working steadily since he took his first job as an errand boy at a grocery store in Baltimore, at the age of seven. Today, he travels over 50,000 miles a year in the pursuit of his profession.

$40,000 Book

Afro-American P. 6 Baltimore, Md.
Dat. 12-5-53

It has 256 pages and 80,000 words. It may be the most important document we have ever compiled. It cannot be purchased at your neighborhood bookstore.



WHERE THE BOOK WENT—Supreme Court building in Washington, D.C. where the $40,000 book was filed.

By Carl Murphy

The brief filed with the Supreme Court in the five school segregation cases by Thurgood Marshall and his associates in the NAACP Legal Department cost $40,000.

Since the funds were put up by citizens all over the country, there has been tremendous book interest in its 256 pages and 80,000 words.

Also, since only a limited number of these briefs have been printed for circulation among lawyers and others interested in the case, they cannot be purchased at the bookstands.

Nevertheless, it is likely to be one of the most important documents in our day and interest is at top peak everywhere as to what is in it.

The first 21 pages contain a statement of the cases and a summary of the conclusions.

PART ONE

The rest of the brief is divided into three parts.

Part one takes up 45 pages. It answers the question whether or not the Supreme Court has the power under the 14th Amendment to abolish segregation in public schools.

Court Has This Power

According to Thurgood, of course the Supreme Court has this power and has exercised it repeatedly to tell the states that they could not segregate colored people in residential areas of cities, on railroad coaches, pullman trains, exclude them from primary elections or from serving on juries nor could the states pay their employees unequal salaries.

The states have been required in any number of cases not to use color or race as a basis on the college and university level and it is argued that if the Supreme Court can do this in the case of higher education, it can do the same thing with elementary and high schools.

Part one also points out that except for the mistaken belief that the separate but equal doctrine is a correct explanation of the meaning of the 14th Amendment, the Supreme Court would have no problem at all before it.

A Supreme Court interpretation that equality as stated in the 14th Amendment, can mean separate but equal, Thurgood says is really an amendment to the 14th Amendment which was designed to prevent any state law from distinguishing between colored and white persons.

Law Shall Be The Same

In other cases, the Court interpreting the 14th Amendment, said that "the law in the state shall be the same for the black as for the white." No discrimination shall be made against colored people on the ground of their color, and any discrimination is practically a brand upon them and their inferiority and a stimulant to race prejudice.

Thurgood calls the separate but equal theory as having been conceived in error. It constitutes a nullification of the amendment, and is a far cry from the claim that "our Constitution is color blind and neither knows nor tolerates classes among citizens."

As to the South's threats to disturb the peace if segregated schools are discontinued, the brief quotes a U.S. Solicitor General, speaking before the high court, as having said in a previous case "many things may rouse a man's prejudice and stir him to anger but he is not always to be humored in his wrath. Dost thou well to be angry?"'

Following that pronouncement the Supreme Court said that "It is urged that segregation will promote the public peace by preventing race conflicts. "Desirable as this is and important, as it is to preserve the public peace, this aim cannot be accomplished by laws which deny rights created or protected by the federal Constitution."

Concept Taken From Slavery

The history of segregation laws in the Southern states reveals their main purpose was to organize the community upon the basis of a superior white and an inferior Negro caste.

This is the concept taken from slavery.

These states desired to build a social order in which the status of colored people would be as close as possible to that which they had held before the Civil War.

The South made an effort even to repeal the 14th Amendment and it failed, but it did secure from the Supreme Court in one case (Plessy vs. Ferguson) an opinion that the equality provided by the 14th Amendment could be obtained in separate institutions designated for the races.

This was a great nullification of the 14th Amendment as originally conceived and added to the Constitution.

Without it, the racial caste system in the United States could not have lasted so long.

Because of it, an inferior place for colored people was gradually defined in the courts, the schools, libraries, parks, theaters, hotels, residences, residential districts, hospitals, insane asylums.

A Legal Fiction

Everywhere including on sidewalks and in cemeteries segregation is destined to secure inequality.

"Separate but equal is a legal fiction. There never was and never will be any separate equality. The U. S. Supreme Court has never used the separate but equal doctrine to sustain the validity of the state separate school laws.

"Our Constitution cannot be used to sustain ideas and practices which we as a people abhor. That the Constitution is color blind is our dedicated belief."

The separate but equal doctrine should now be overruled."

PART TWO

The 119 pages which constitute Part 2 of the $40,000 book is the largest section in it and it answers the Supreme Court's question as to whether the congress, which submitted the 14th Amendment, and the state legislatures and conventions, which ratified it, understood that it would abolish segregation in public schools.

Thurgood's answer is that the 14th Amendment was intended to destroy all caste and color legislation in the United States, including racial segregation.

Political scientists, historians, experts and attorneys, specialists in the period between

1820 and 1900 who worked in the last 22 weeks on this subject, came up with the answer that those who drew up this amendment intended that it would deprive the states of power to make any racial distinction in the enjoyment of civil rights.

These framers, Thurgood said, were the men who came to the 39th Congress, many of them abolitionists, dedicated to the principle of complete equality for all men.

Equal Benefit For All

Charles Sumner of Massachusetts, whose resolution was introduced in the 39th Congress in 1865, called for "the organization of an educational system for the equal benefit of all without distinction of color or race."

Representative Hubbard of Connecticut "The era is dawning when it will be a reproach to talk in scorn about the distinctions of race or color."

Representative Dawson of Pennsylvania: "The supporters of the bill held the white and black race are equal and children ought to attend the same schools with white children and to sit side by side with them."

Republican Majority

In this Part 2 section of the $40,000 book, Thurgood and his associates point out that the Republican majority in the 39th Congress was determined to prevent future congresses from diminishing federal protection of the rights of colored people.

Rep. Thaddeus Stevens said that the 14th Amendment was made necessary by the oppressive codes which had become law in the southern states.

"Unless the Constitution defends them, those states will, I fear, keep up this discrimination and crush to death the hated freedmen.

"Some have said my civil rights bill secures the same things. That is partly true, but a law by congress is repealable by a majority, and I need hardly say that the first time that the South with their copperheaded allies obtain the command of Congress it will be repealed.

"This amendment once adopted cannot be annuled without two-thirds of Congress, and that they will hardly get."

Rep. Garfield of Ohio, defending the 14th Amendment, said the Civil Rights bill is now a part of the law of this land but every gentleman knows it will cease to be a part of the law whenever the sad moment arrives when that gentlemen's party (Democrats) comes into power.

Rep. Bingham, father of the 14th Amendment, answering critics that it took state rights away from the states said:

"No state ever had the right under the forms of law, or otherwise to deny to any freedman the equal protection of the laws or to abridge the privileges or immunities of any citizen of the Republic, although many of them have assumed and exercised the power and that without remedy."

Gov. Holliday Of Virginia

Discussing the state of public education at the time of the 14th Amendment, Governor F. W. M. Holliday of Virginia in 1880 was quoted as saying that "the public schools were a luxury to be paid for like any other luxury by the people who use their benefits."

Also quoted is an opinion of a leading Southern publication, DeBow's Review, which summed up the matter of education for colored people during slavery as: "Under the institution of slavery we used to teach them everything except to read."

Thurgood said that the framers of the constitution knew of this attitude toward the education of colored people and they also knew that no educational systems even for whites were created in the Southern states until after the close of the Civil War.

Thurgood points out that from the kind of arguments which went on in the state legislatures and the conventions which ratified the 14th Amendment the eleven former slave states seeking readmission to the union understood that the 14th Amendment stripped them of power to maintain segregated schools.

Education Without Distinction

Florida, for example, immediately adopted a constitution in order to enter the union which provided for the education of all children without distinction.

Several years later, Florida passed a law forbidding any racial distinction in the public schools, conveyances, accommodations and amusements.

It was only 20 years later that the first compulsory school segregation provision appeared in Florida.

South Carolina's new constitution after the war provided that "all the public schools, colleges, universities of this State, shall be open to all without regard to race or color." More than a quarter century elapsed before South Carolina in 1895 changed these laws to require racial segregation in public education.

The majority of the 22 union states ratifying the 14th Amendment understood that it forbade compulsion of race segregation in public schools. Four union states failed to ratify.

The Connecticut and Rhode Island legislatures forbade separate schools in 1868.

Massachusetts had outlawed separate schools before the amendment was passed.

Maine and New Haven seem never to have had any separate schools.

New York passed a law in 1873 opening common schools and public institutions to all.

Michigan took a number of steps. It banned racial discrimination by insurance companies, removed the bar against interracial marriage, prohibited racial separation in all places of public accommodation, recreation and amusement.

Neither Maryland nor Kentucky have ever enacted a law specifically forbidding racial segregation in public schools.

PART THREE

Part three consists of eleven pages.

It is the shortest of the sections in the book and answers the Supreme Court's question: "If the high court should ban segregation in public schools should it be done immediately or gradually."

Thurgood and his associates take the position that the children should be admitted forthwith to public schools without distinction to race or color.

There is no legal justification or precedent for postponement and they can suggest no terms for a decree which will secure effective gradual adjustment, because that decree would not protect our rights.

As to threats of grave disorders and abolishing the public school system if segregation is outlawed, the brief says, this court can't be intimidated by threats of unlawful action.

Immediate desegregation will not have the untoward consequences anticipated.

Law-Abiding People

The states in question are inhabited in the main by law-abiding people who up to now have relied upon what they believed (erroneously) as we have demonstrated, to be the law.

It cannot be presumed that they will not obey the law as expounded by this court.

Supplement

At the very end is a supplement of 36 pages analyzing the political, social, and legal theories surrounding the adoption, submission and ratification of the 14th Amendment. The conclusion of Thurgood Marshall and his associates is that it was the intent and understanding of the congress, states and legislatures which voted on the question, that this amendment banned all state, imposed racial restriction.

Colored children, it said, in these cases, are arbitrarily excluded from state schools set apart for the dominant white group.

Such a practice can only be continued on a theory that colored people, because they are colored, are inferior to all other Americans and therefore must be segregated from other human beings.

Such a ruling by the high court in these cases would destroy the intent and purpose of the 14th Amendment and the very equalitarian meaning of our government.

12d 1953 EDUCATION PUBLIC SCHOOLS

CAN'T ACCEPT INTEGRATION:

Brownell brief irks 2 southern newspapers

Two southern newspapers expressed disappointment in U. S. Attorney General Herbert Brownell's brief on elementary school segregation Sunday.

The Baltimore Sun takes issue with Mr. Brownell's conclusion that the Supreme Court has power under the 14th Amendment to end segregated schools.

The Raleigh (N.C.) News and Observer asserts that Mr. Brownell's brief merely adds to the suspense which these cases have created throughout the south."

Questions Judicial Power

The Sun, irritated by the Brownell brief, finds that "Many laymen will feel that, at least in spots, the Brownell advice is not very helpful."

Continues the Sun editorial:

"The question at issue was whether the Fourteenth Amendment outlaws school segregation based on race. The law of the land as laid down by the court up to now has been that segregation was permissible if the educational facilities provided for one race were equal to those provided for the other. Is the court now empowered to reverse this reading of the law?

"Such a reversal would be a legislative rather than a judicial act, unless some reason can be found for supposing that the Fourteenth Amendment was against segregation all along. The normal place to find such reasons would be in the debates in the Congress and the state legislatures which passed on the amendment in the first place.

Power In 14th

"Mr. Brownell's brief now says that "the legislative history of the amendment in Congress is not conclusive" on the school segregation question. Segregation references in the available materials on ratification of the amendment in the various state legislatures, says the Brownell brief, are so scanty and imcomplete that they do not "justify any definite conclusion." But Mr. Brownell's brief nevertheless finds power in the Fourteenth Amendment for the Supreme Court to outlaw segregation.

"The Brownell brief suggests—and here it is obviously right—that if the Constitution requires the court to outlaw segregation, then the court has no business speculating on the results of such an order. To speculate on practical results, the Brownell brief rightly implies, is characteristic of constitutional conventions or legislatures, rathern than of courts.

Mentions New Jersey

"Nevertheless, as if to comfort the court should it go on to a kind of quasi-legislative action, Mr. Brownell stresses some reassurances. Segregation has been abandoned without any trouble, Mr. Brownell says, in the school system of New Jersey and in the country's armed forces.

"Here some of the justices are likely to note two things. New Jersey is and always has been quite a distance above the Mason and Dixon line. And military discipline has not prevailed in a state like, say, South Carolina, for some time.

"On the other hand, in South Carolina, in New Jersey and everywhere else in the United States, progress is being made in dispelling the old injustices of unhappy history of this the Supreme Court will doubtless take judicial notice."

Adds To Suspense

Editorial comment of the Raleigh News and Observer follows

"Although it is in no sense binding on the court and does not even furnish a reliable indication of what the Supreme Court may decide, the brief filed yesterday by Attorney General Brownell in the five public school segregation cases will add to the suspense which these cases have created throughout the South.

"The Attorney General surprised mildly in two particulars. He had been expected to wait until closer to the deadline of Dec. 7 set by the court for a rehearing of the cases to file his brief, since he had previously asked for postponement of the original date. The brief itself was also surprising in that it takes a more positive and unequivocal position in opposition to segregation in the public schools than many people had expected.

Affect 17 States

"These cases, which involve the states of Kansas, South Carolina, Virginia, Delaware and the District of Columbia directly, and indirectly affect 17 others, have been before the highest court for a long time. When the court adjourned for the term last June, decisions had been regarded as overdue for some weeks and decisions on the last day of the term were regarded as almost certain. Instead, however, the court ordered a rehearing of the case and called for new briefs to answer several questions asked by the court itself.

"The action was regarded generally as reliable evidence that the court was divided, and perhaps sharply divided, on the question. Between terms, Chief Justice Vinson died, and was succeeded by Chief Justice Warren, the former Governor of California. A single change in the nine-man court may or may not have been sufficient to affect the decision. However, the change has not cheered the advocates of segregation, who had hoped that the late Chief Justice would either uphold their position or, at the least, take a middle-of-the-road course, with allowance for a change over a period of years.

Burden On Warren

"The suspense may last for some time yet. The court will hear arguments again. The eight justices who have already given the case an unusual amount of attention will presumably not require much more time to arrive at their final judgments, but the new Chief Justice may wish to give the matter extended consideration, particularly should it develop that his vote will be the controlling one."

PUBLIC SCHOOLS
THE BROWNELL BRIEF

Hasty Conclusions Of The Brownell Brief

AN EDITORIAL

The haste with which newspapers and governors in the south commented on the brief filed by U.S. Attorney General Herbert Brownell in the five school segregation cases, shows our southern brethren had not read the 188-page document.

They couldn't have.

The brief was only filed Friday. No advance copies were available.

Yet Saturday's papers carried their comments.

Even so able a newspaper as the Baltimore Sun, either read the brief hurriedly or with only its prejudiced eye open.

For example, Sunday's Sun says:

"The Brownell brief is not very helpful."

How does the Sun know?

The United States Supreme Court postponed arguments on segregation in public schools early this year until it could get five questions answered.

The court invited U. S. Attorney General Herbert Brownell to help.

The answers were prepared for the U. S. Supreme Court. It, too, hasn't had a chance to study Mr. Brownell's 188 pages, but the hasty Sun passes a quick adverse judgement.

We think the Brownell brief into which the great legal staff of our government put painstaking effort will prove of tremendous help to the high court as intended.

No need to labor that point. We can afford to wait for the judgement of the Supreme Court itself.

The Sun says further:

"The law of the land as laid down by the (U. S. Supreme) court **up to now** has been that segregation was permissable if the educational facilities provided one race were equal to those provided for the other."

Let's look at that "up to now" expression because it means "from the beginning up to the present."

In that sense "up to now" is grossly misused and untrue.

1. Mr. Brownell's investigation of the facts shows "ample evidence that Congress which framed the 14th Amendment did understand it to establish the broad constitutional principle of full and **complete equality of all** persons and forbade to the states all legal distinctions based on color."

2. No state which seceded from the Union during the Civil War (1860-65) was allowed to re-enter the Union with a state constitution requiring a segregated school system.

For example, South Carolina's new constitution required mixed schools.

3. The doctrine of "separate but equal" was not the law, therefore, as interpreted by the Supreme Court until 1899 (Plessy vs. Ferguson) over 30 years after the 14th Amendment was adopted.

4. Since then the "separate but equal" doctrine has been reversed by the Supreme Court in cases involving sleeping cars and coaches, buses and steamboats.

5. Within the past five years the Supreme Court looking beyond segregation in separate colleges ordered equal and identical treatment for a colored student in a mixed college.

What riles all our southern brethren is the repeated insistence in the Brownell brief that the 14th Amendment guarantees equal and absolute equality of **citizens.**

The question, therefore, before the Supreme Court is not whether schools are equal or unequal, but - - -

Whether the states have the power to set up a legal requirement that colored children must attend public schools where they are segregated solely because of their color.

The judicial inquiry, it must be emphasized, is not simply to determine whether there is **equality between schools:** the Constitution requires there be **equality as between persons.**

This is the crux of the Brownell brief and if the Sun or the southern governors do not regard it as helpful it is, because, they realize that the separate school states are without the legal power to set up racial distinctions in public institutions.

COURT ARGUMENTS SET DEC. 7

Brownell, GOP Facing Segregation Showdown

Journal-Constitution Bureau
1426 G Street, N. W.

By KEN TURNER

WASHINGTON, Nov. 21—Fifty-seven years ago last May 18, the United States Supreme Court gave its judicial blessings to a pattern for segregation of the races.

It was a 7-to-1 decision with one justice not participating.

Since that time the court's edict, known universally as the "separate but equal" doctrine, has, in the main, withstood all frontal attacks but has given ground when shot at from the side.

Chief Justice Warren

Next month the question goes before the high court again in what many observers both here and elsewhere believe may bring a decision washing out or curtailing this half-century-old landmark that has given the South and other states legal protections for their dual system of public schools for the races.

Arguments are scheduled to be heard by the court beginning Dec. 7 on five cases which make a frontal attack on the "separate but equal" doctrine. All of the cases involve the operation of segregated schools. They are from South Carolina, Virginia, Delaware and Kansas—and the District of Columbia.

Last December the court heard extensive arguments on all of the cases and a decision was expected before the court quit in June for a summer recess. But at the last minute the court ducked—some think for political reasons—and called for re-argument to a series of five specific questions—questions which some contend show the court's hand as to its leanings.

In this group is Georgia's distinguished Sen. Walter F. George, himself a onetime associate justice of the Georgia Supreme Court.

Problem for Brownell

Sen. George said at the time that the nature of the questions asked by the court indicated that its ruling in the key South Carolina case would be adverse to the segregation pattern now followe in that state.

While the whole matter poses a serious problem for the South if the decision is against its long-time accepted pattern of segregation, it also brings into focus a problem for the Eisenhower administration in general and the attorney general in particular.

The court, last summer in postponing action on the several cases, invited the attorney general to take part in the oral arguments and to file a brief "If he so desires."

Sometime between now and Dec. 7, Herbert Brownell, the attorney general, must take a stand on the question. Unquestionably his decision will reflect the views of President Eisenhower.

One observer here recently called it "his most important legal decision since taking office."

While the issue is public school segregation, also involved is the GOP's effort to build up republicanism in the South will come to naught.

Favors States Rights

The attorney general is also aware of the fact that President Eisenhower, more so than any president in recent years, favors states rights, and that those opposing the end of segregation in the public schools lay great stress on the fact that it is a matter for the individual states.

President Eisenhower is strongly on record against segregation in the District and has spoken out sharply against "second class citizenship" and distinctions based on "race, creed or color." But he has not crossed any state lines to condemn segregation patterns of the states as such.

Knowing these facts and realizing that any decision slapping down the "separate but equal" doctrine would have vast social and political ramifications, observers here are watching with considerable interest what approach the attorney general will take on Dec. 7.

While the decision is a matter for the nine justices of the high court the view here is that Mr. Brownell's stand very likely will have a major bearing on the court's conclusions.

Five Questions Raised

The five questions the high court propounded cover both past history and possible court rulings.

First the justices have called for "evidence" on whether those who put the 14th Amendment (a post-Civil War measure designed to protect the newly freed slaves) into the constitution contemplated or understood that it would abolish segregation in public schools.

Second, the justices asked whether, assuming there was no such understanding by Congress and the state, the amendment's framers understood that future congresses might abolish segregation or that the Supreme Court "in the light of future conditions" had the "judicial power" to "construe the amendment as abolishing such segregation of its own force"?

Third, the court has called for discussion on whether (if the answers to the first two questions fail to dispose of the issue) "it is within the judicial power, in construing the amendment, to abolish segregation in public schools."

The fourth and fifth questions have to do with how to handle a decision against segregation, assuming the court should reach such a conclusion.

Adjustment at Issue

The justices want to know whether the court would have to order that "Negro children should forthwith be admitted to schools of their choice" or whether the court could "permit an effective gradual adjustment to be brought from existing segregated systems to a system not based on color distinction"?

Further, the justices want to know whether on the same assumption the Supreme Court itself should hand down a detailed decree, whether it should name a special master to recommend specific terms, or whether it should turn each case over to the lower district court involved, and if so, under what instructions.

The cases from the states all turn largely on the 14th Amendment, but the District case, because of the unique federal status of the District, turns more on the Fifth Amendment, the basic "due process" amendment to the constitution applying to congressional rather than state action.

Possible Moves

The nature of the questions, plus the extreme interest shown by the justices during the first argument of the cases last December in the possible effects of a ruling against segregated schools, suggests these possibilities:

That a majority of the justices favor some move toward the elimination of public school segregation.

But there was not a majority, however, in favor of a flat ruling outlawing the half-century old doctrine of "separate but equal" facilities for children of the white and Negro races.

Nation Set for Big Day

WASHINGTON — The U. S. Supreme Court has the power to abolish the segregated school system and should issue a decree immediately, NAACP attorneys said this week.

The NAACP attorneys contend that the court does have the power to rule that segregated schools violate the 14th Amendment and that they know no reason why the court should postpone a decision.

The attorneys also said that no "gradual adjustment" plan would be effective.

These statements were included in the brief filed last week by NAACP lawyers with the U. S. Supreme Court in the pending public school segregation cases to be reargued Dec. 7.

The brief presents the NAACP answers to the five questions posed by the high court when it ordered the reargument last June 8.

The five cases—South Carolina, Kansas, Virginia, Delaware and the District of Columbia—come up for reargument before the high court Dec. 7-8.

The issue involved in all five cases is whether the states and the District of Columbia have the constitutional power to segregate white and Negro students in separate schools in the elementary and secondary school levels. The District of Columbia case is being financed by a local group of Negro citizens.

NAACP ATTORNEYS, acting in behalf of the Negro children and parents in these cases, argue that segregation per se is discrimination and a violation of the equal protection clause of the Fourteenth Amendment to the Constitution of the United States. The District of Columbia case is based on the

MONTGOMERY, Ala.—While the nation awaits the Dec. 7 reargruments of the five pending school cases before the United States Supreme Court, the Alabama Legislative Reference Service has begun to collect data on plans, schemes and ideas other dual education states are developing to meet the eventual high court decision.

Fifth due process clause of the Fifth Amendment.

The school boards in the lower courts based their arguments mainly on the out-

dated, outmoded "separate but equal doctrine." They

contend that the local provisions for separate schools are not in conflict with the Fourteenth and Fifth Amendments.

The reargument was originally scheduled before the United States Supreme Court on Oct. 12, but was postponed at the request of the Attorney General who asked for an extension of

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...of the 240-page ...wi 525 foot ...k, an... twenty- ...ers and exp... tensive ...oss the country part a Thurgood Mar...all, N... special counsel and director of the Legal Defense and Educational Fund, Inc., and his assistant, Robert L. Carter.

Preparation of the brief was coordinated by the NAACP Legal Defense Fund staff consisting of Constance

ATLANTA, Ga. — The State of Georgia—through Gov. Herman Talmadge and administration stalwarts—moved last week to circumvent a probable Supreme Court decision outlawing public school segregation.

Not waiting for the nation's highest tribunal to rule on the issue, Talmadge legislative leaders introduced measures in the Legislature which would permit support of private schools by taxation and create a commission to keep white and colored children in separate schools.

Baker Motley, Jack Greenberg, Elwood Chisolm, David Pinsky, U. S. Tate, Daniel E. Byrd and June Shagaloff, with the assistance of Marvin Karpatkin and Julia Baxter.

In addition to the staff, other attorneys and legal experts who worked on the brief were:

Charles L. Black Jr., William T. Coleman Jr., Charles T. Duncan, George E. C. Hayes, George M. Johnson, William R. Ming Jr., James M. Nabrit Jr., Frank D. Reeves, John Scott, Jack B. Weinstein, Charles S. Scott, Spottswood W. Robinson III and R. Boulware. Also Professor Walter Gellhorn of Columbia University School of Law; Loren Miller, Los Angeles, Calif., and Professor John Frank, Yale University School of Law.

Included among the other experts were Dr. John A. Davis, associate professor of Government at City College of New York; Dr. Mable Smythe, economist, Shiga University, Hikone City, Japan; Dr. Alfred H. Kelly, Professor of Constitutional History, Wayne University; Howard Jay Graham, law librarian of Los Angeles County Bar Association; Dr. Horace M. Bond, president of Lincoln University; Dr. C. Van Woodward, Professor of History, Johns Hopkins University; Marion Wright, Professor of Education at Howard University; Dr. John Hope Franklin, Professor of History at Howard University; Professor Ben Kaplan, Harvard Law School; Dr. Milton R. Konvitz, Cornell University, and David Feller of the CIO, Washington, D. C.

Also Dr. Charles R. Wesley, president of Wilberforce University; Robert K. Carr, Professor of Political Science at Dartmouth College; Dr. Howard K. Beale, Professor of History at the University of Wisconsin; Dr. Charles H. Thompson, dean of Graduate School at Howard University; Dr. Charles S. Johnson, president of Fisk University, and Dr. Buell Gallagher, president of the City College of New York.

Also Prof. Kenneth Clark of City College of New York; Dr. Rayford Logan, Howard University; Lillian Dabpey, Baltimore, Md.

GEORGIA GETS PLAN TO SEPARATE PUPILS

Talmadge Calls for Amendment to Make Schools 'Private' if Court Bans Bias

ATLANTA, Nov. 16 (UP)—The Georgia Legislature was asked by the Talmadge administration today to prepare a constitutional amendment permitting abolition of the state's public schools if the United States Supreme Court outlawed segregation.

A hold-over session of the Legislature had been sitting less than an hour when state leaders offered a resolution spelling out the details of a private school system financed by statewide taxes.

A companion resolution, which would not require ratification by the electorate, set forth specifications for a state education commission headed by the Governor to administer such a system of primary and high school training.

The first action must be approved by a two-thirds majority of the Legislature and by a majority of the voters.

Unless extraordinary steps are taken to rush the proposed amendment, it could not be written into law until November of 1954—too late to affect next year's race for Governor.

Several other Southern states have considered similar plans to bypass a Supreme Court ruling.

South Carolina has a constitutional amendment that would eliminate the requirement for a public school system. It does not become effective until ratified by the Legislature, which has held up action pending a Supreme Court ruling. The South Carolina proposal, however, does not provide for a substitute school system.

Governor Pledges Fight

The Supreme Court has five separate segregation cases up for further argument in December. A decision is expected some time next year.

Gov. Herman Talmadge, who has vowed to fight any attempts to end segregation in the schools as long as he holds ofice, hoped that by switching operations from public to private administration the individual schools could control the situation. Actually, such a transfer would be little more than a paper changeover.

The resolution provides that the state and municipalities could levy taxes, as they now do, to provide funds for education in private schools "when and in such manner as the General Assembly may authorize by law."

It specifically states that "separate schools shall be provided for the white and colored races."

The proposed education commission would "formulate a paln of legislation and prepare drafts of suggested laws whereby the state may, by taxation, provide adequate educatin for the white and colored races in separate schools."

14TH AMENDMENT HELD BANNING BIAS

Supreme Court Hears It Has Power to Put End to Racial Segregation in Schools

By LUTHER A. HUSTON

Special to THE NEW YORK TIMES.

WASHINGTON, Nov. 16—Lawyers representing four groups of Negro parents told the Supreme Court today that it had constitutional power to end forthwith racial segregation in the public schools.

Furthermore, they said, it was the intent and understanding of Congress in submitting the Fourteenth Amendment, and of the states in ratifying it, that it would abolish racial segregation in every form.

The Fourteenth Amendment was submitted to the states by the Thirty-ninth Congress, and was declared ratified on July 28, 1868. It provides that "no state shall make or enforce any law which shal labridge the privileges or immunities of any citizen of the United States, * * * nor deny to any person within its jurisdiction the equal protection of the laws."

H. Albert Young, Attorney General of Delaware, told the high court Congress did not intend that the amendment should affect public school segregation. He asserted that the Supreme Court lacked "judicial power to give the amendment a meaning directly contrary to that given by its framers." Delaware is one of the states involved in suits pending in the court.

These conflicting constructions of the intent of Congress and the power of the Supreme Court were contained in the first briefs filed in response to the court's request that these points be dealt with in written and oral arguments. The oral arguments are scheduled to begin Dec. 7.

Court Seeks More Data

On June 2, the high court, in postponing until the fall term a decision in the segregation cases, asked both sides to discuss specific phases of the cases.

The first three dealt with whether Congress or the states understood that the Fourteenth Amendment would abolish school segregation, and whether it would be within the judicial power, "in the light of future considerations," to construe the amendment as abolishing segregation "of its own force."

The remaining questions dealt with procedure that might be followed in the event that the court declared racial segregation to be unconstitutional.

Groups of Negro parents in South Carolina, Virginia, Kansas and the District of Columbia, carried to the Supreme Court appeals from lower court rulings that sustained the constitutionality of school segregation. Delaware appealed from a ruling of its own Supreme Court that segregation laws in that state were unconstitutional.

The cases were briefed and argued during the last term of the court, but because of the importance of the issue, the justices asked the additional questions and ordered the new briefs and oral arguments.

The Justice Department also was asked to file a brief and is expected to do so soon. It it understood, however, that the department will not participate in the oral argument.

The brief filed today by the lawyers for the Negro parents covered only the South Carolina, Virginia, Kansas and Delaware cases. Presumably the District of Columbia case will be dealt with in a later brief.

"The substantive question common to all [the cases] is whether a state can, consently with the Constitution, exclude children solely on the ground that they are Negroes from the public school which otherwise they could be qualified to attend," the brief said, adding:

"The answer is: The Fourteenth Amendment prevents the states from according differential treatment to American children on the basis of their color or race."

Negro Equality Stressed

The brief denied the argument of the states involved that constitutional requirements were met if separate, but equal facilities were provided.

"Whatever other purposes the Fourteenth Amendment may have had," the brief declared, "it is indisputable that its primary purpose was to complete the Thirteenth Amendment by ensuring to the Negro equality before the law."

The Thirteenth Amendment, which was declared ratified Dec. 18, 1865, abolished slavery and involuntary servitude throughout the United States.

As for the high court's questions, the brief asserted that the debates in the Thirty-ninth Congress and succeeding ones "clearly reveal" the intention that the Fourteenth Amendment would prohibit all state action predicated on race or color. Evidence that the states, in ratifying the amendment, understood that that was its purpose "is convincing," the brief asserted.

Eleven Southern states that ratified the amendment, it was said, adopted Constitutions that did not require or specifically authorize segregated schools. Twenty-two of the twenty-six Northern states that ratified "acted with an understanding that it prohibited racially segregated schools, the brief declared.

The lawyers for the Negro parents also took the position that the amendment was "self executing," and that the judiciary could enforce its provisions without Congressional implementation.

They found no reason why segregation should not be ended immediately without a "gradual adjustment from segregated to nonsegregated school systems." The Supreme Court had asked whether, in the exercise of its equity powers, it could decree such a gradual adjustment.

Delaware View Presented

Mr. Young, in his brief for Delaware, asserted that the problem of segregation in the schools was known to Congress when it debated the Fourteenth Amendment. He said the debates "afford strong evidence" that the amendment was considered as having no effect on public school segregation.

A majority of the House and Senate at that time was from states that favored segregation, he argued, and they would not have voted to submit the amendment if they had believed it would invalidate segregation.

At the time the amendment was submitted, Mr. Young said, Congress established segregated schools in the District of Columbia. It would not have done this if it believed that the amendment outlawed all forms of segregation, he added.

The Supreme Court, Mr. Young argued, was called on to meet a situation not contemplated by the framers of the amendment. There was nothing to show that race prejudice and hostility had changed sufficiently since that time to "justify a reversal of the historic mean[illegible] of the Fourteenth Amendment," he said, adding:

"The problem is a legislative and not a judicial problem."

The Supreme Court acted today in a case involving the right of a Negro to attend Louisiana State University. It granted a stay of an injunction issued by the Fifth Circuit Court of Appeals until the high court could determine whether it would review the issues involved.

IN THE NATION

SUPREME COURT'S QUESTIONS ON SCHOOL SEGREGATION

BY ARTHUR KROCK

Washington, Oct. 29- In November the Supreme Court will receive written replies to the questions it addressed last June to the lawyers on both sides of the constitutional issue over segregation by color in the public schools. The Department of Justice, which is doing all the research work for those who hold the system to be in violation of the Fourteenth Amendment, is expected to submit its answers first, to be followed by those from the interstate combination of attorneys on the other side.

The questions asked by the Supreme Court when it set the cases for re-argument on Dec. 7-8 deal with several factual and legal points in the controversy. Responses are to be made in briefs as well as in oral arguments. The Government is working to have its briefs ready in time for state counsel to go over the material before presenting their own, and for the members of the Supreme Court to examine the pros and cons thoroughly before the day for oral argument arrives.

The Supreme Court put no time limit on the answers, and both sets may be late. The Government if it chose conceivably could wait until the morning of the opening argument, and so could the lawyers for the states. But both sides are eager for the case to go before the Supreme Court WITH ALL THE issues and arguments clearly defined, for each other and for the justices. Therefore, the planned procedure will probably be achieved.

THE RIVAL RESEARCHERS

In the Department of Justice a research staff, termed "Small" and headed by Philip Elman, is working under the direction of J. Lee Rankin, Assistant Attorney General. In Kansas, Virginia, Delaware, the District of Columbia and South Carolina similar staffs are in action to try to prove that the Fourteenth Amendment did not intend to, and does not, abolish the right of a state to have a racially segregated school system. The government has not yet decided who will be its principal spokesman. The outstanding lawyer on the other side is John W. Davis, who will argue for South Carolina. And the time-weathered fact that he is the leader of the American bar suggests he will make the chief constitutional argument.

But this eminent advocate will be flanked by excellent legal talent, from the offices of State Attorneys General and from private firms. Among these is T. Justin Moore of Richmond, Va., who will represent a county school system in the state and whose staff already has produced material enough to fill two books, each a foot thick. Most of this will appear as an appendix to a digest of the material, a format which all the briefs will probably follow.

The Fourteenth Amendment, on the actual legal effect and intent of which the decision of the Supreme Court may wholly rest, was proposed to the State Legislatures in June, 1866, by the Thirty-ninth Congress in the new atmosphere of Negro emancipation. It was approved by twenty-three Northern states. It was rejected by Delaware, Maryland, Kentucky and ten Southern states (California took no action). But enough Southern states were forced into the "yes" column under Reconstruction to allow the amendment to be declared ratified on July 28, 1868 (though New York and New Jersey attempted to withdraw their approval after the methods employed to reverse Southern state rejections were revealed).

The amendment, with this clouded title, provides that no state may make or enforce any law abridging the privileges or immunities of any citizen, depriving any "person" of life, liberty or property without "due process," or in any way denying any "person the equal protection of the laws."

Nature of the Questions

The first two questions addressed to the lawyers by the Supreme Court deal with these matters of fact: What evidence exists to determine whether Congress, in submitting the amendment, and State Legislatures (or conventions), in approving it, contemplated or understood that it would abolish state school segregation, or vice versa? If there is no evidence to the affirmative, was it, however, the understanding of those who drafted the amendment that (A) a later Congress might abolish the system under the section that gives Congress authority to enforce all the provisions; or (B) it was within the judicial power to construe the amendment, "in the light of future considerations," as a sanction for the abolition of the system?

The next questions deal with these matters of law: If the evidence submitted does not dispose of the above inquiries, is abolition of the system within the general judicial power of constitutional interpretation? And if the judicial decision shall be that the system violates the amendment, (A) "would a decree necessarily follow" that Negro children must forthwith be admitted to whatever public schools they choose in their districts; or (B) cific decrees, and if so, on what legal could the Supreme Court exercise its standards and procedures? equity powers to effect this change gradually? Assuming that the court would thus exercise its equity powers, should it formulate detailed decrees, and if so, on what specific issues; or should a court agent be appointed to hear evidence and recommend specific terms; or should the lower courts be

The above illustrates the magnitude of the factual research and the gravity of the legal issue, quite apart from the acute social and political aspects of both

Times
P. 26 L
Tues. 10-27-53
New York, N.Y.

Governor Is Right In Calm Approach

Gov. Herman Talmadge yesterday announced a sensible, calming administration proposal with regard to the possible ending of school segregation by the Supreme Court of the United States.

The court is to hear arguments in early December on what the contending parties believe the framers, and supporters, of the 14th Amendment had in mind as to the full meaning and intent of that amendment. The fact the amendment was obtained by harshly coercive methods, so obviously fraudulent and nonrepresentative of the popular will of the time, is attested to by the fact that Ohio, New Jersey and New York states sought to withdraw their previous endorsement of it — a fact largely overlooked by the more professional Southerners of today. But this does not remove the amendment. It remains. And the Supreme Court will, in the spring, announce its decision or decisions.

Governor Talmadge first proposes a resolution to set up a committee of 21 members to study whatever decision is made by the Supreme Court and to recommend action to the state. Secondly, he offers a constitutional amendment which would allow the state to set up private schools, for white and colored children, which would receive state financial support. It is not possible to do this now, the state's own Constitution not permitting.

We congratulate the governor on this approach.

It does not agitate or in any manner incite violence.

Rather, it calls for studious contemplation.

The problem is, of course, serious and packed with emotional explosives, as is always true when old customs are disturbed. It is more so in four states—Georgia, Mississippi, South Carolina and Alabama. In most other Southern states for some time Negroes in small numbers have been attending the state universities. But no one can say what even their reaction would be if the court were to nullify segregation even in common schools.

At any rate, the governor of Georgia has earned the gratitude of all thoughtful persons for his calm and studied approach.

* * *

We are not going to have another war between the states. We are going to do what the Supreme Court says. The course may take strange directions if the court says there shall be no legal segregation in public schools. It may even take the turn of private schools, state-financed.

But the possibility remains that the court will rule such schools to be subterfuges taken in an effort to thwart the court's rule. Certainly such a plan will be challenged.

Lost sight of is the fact that school people think, if left alone, they could, with the cooperation of Negro school officials, largely handle a nonsegregation decision from an administrative point of view. Many Negroes who want legal segregation off the books would nonetheless be satisfied with separate schools. They, as citizens and persons, dislike the fact of legal support of segregation and do not object too much, per se, to separate schools. Many believe the problem could be worked out with a minimum of trouble if all cooperated and if there were no agitators at work crying for blood.

The court, of course, may not disturb the common schools. There may be no need for study of amendments. But certainly the professional school rule will not be changed, and the people must begin to think and to note what Texas, Arkansas, and other Southern states have been able to do without violence or trouble of any sort.

The big thing is to realize that violence will never solve the problem. Thoughtful, prayerful 1953 Christian thinking will work it out.

We join in a salute to the governor who, for all his extreme feelings on the subject, has risen to the challenge of it and come forward with the only two proposals possible for a civilized people dedicated to the Christian ethics. Let's keep ourselves on this plane in the months ahead.

Bar Deal On School Segregation

WASHINGTON, Nov. 16—(INS) Negro petitioners before the U.S. Supreme Court flatly rejected suggestions of compromise today and called for an immediate end to segregation in public schools.

In a 50-page joint brief, they declared the 14th Amendment to the Constitution was clearly intended to abolish "all form of state-imposed racial distinctions, necessarily excluding all racial segregation in public education."

Their contention was disputed in an answering brief filed simultaneously by Atty. Gen. H. Albert Young of Delaware.

Young said: "Of the 50 senators (in the Congress adopting the 14th Amendment in 1866) 24 came from states which had either mandatory segregation or no education for Negroes. . . . It is not likely they would failed to discuss the consequences. . . if they believed segregation was to be outlawed."

The opposing briefs will be discussed in arguments beginning Dec. 7.

Tureaud Wins Re-Entry To Louisiana U.

NEW ORLEANS—(INS)— A. P. Tureaud, Sr., New Orleans attorney and father of the 17-year-old Negro youth who gained temporary re-admission yesterday to Louisiana State University from a U. S. Supreme Court ruling said that he and his son "were both overjoyed" at the news.

The elder Tureaud, who first learned of the 8 to 1 high court decision, from International News Service, said his son will "definitely return to resume his studies."

The temporary order means Tureaud, Jr., returns to LSU until the high court actually rules in the case.

The youth won admission to LSU and became the first Negro under-graduate student in the school's history by order of the Federal District Court at Bator Rouge, La., where the University is located.

But a court of appeals ruled October 28 that the first court lacked jurisdiction in the case.

"We're really pleased over the decision. It means a lot to the boy," Atty. Tureaud told I. N. S.

Young Tureaud maintained, through his father's plea, that he could complete a pre law course in a shorter time at LSU than at the state-supported Southern University also located at Baton Rouge.

School Bias Arguments End; High Court Will Rule Later

By LUTHER A. HUSTON
Special to THE NEW YORK TIMES.

WASHINGTON, Dec. 9—Arguments ended in the Supreme Court today on whether racial segregation in the public schools is constitutional, and the nine justices took the question under advisement. The justices must decide whether the doors of white schools shall be thrown open to Negro pupils in seventeen states and the District of Columbia, where pupil segregation is mandatory.

Several other states, notably Kansas, where complete or limited segregation prevails under permissive statutes, also will be affected by the court's ruling.

The court had heard more than ten hours of argument when the hearing closed at 3:12 P. M. today. Although many phases of the problem were touched on, some veteran observers of major constitutional battles before the high court doubted doubted that all the perplexities of the justices had been dispelled.

Those remaining will have to be resolved in judicial conferences and in the study the court members will give to the voluminous documents that constitute the written records in the five pending cases. A decision is not expected for several months.

Two Amendments Invoked

The cases came from South Carolina, Virginia, Delaware, Kansas and the District of Columbia. Those from the four states were brought under the Fourteenth Amendment, which forbids any state to make or enforce laws that infringe on the rights or privileges of any citizen of the United States.

The District of Columbia case involves the provision of the Fifth Amendment that protects citizens from deprivation of life, liberty or property without due process of law.

The basic issue in all the cases however, is whether the states and the district have the constitutional power to require white and Negro pupils in elementary and secondary categories to attend separate public schools.

A corrolary question is whether the present justices should now set aside a doctrine, laid down by the Supreme Court, nearly sixty years ago, that school segregation is not unconstitutional if equal facilities are provided for each race.

Heading the lawyers that pleaded the states' cause was John W. Davis of New York, who was the Democratic Presidential candidate in 1924. Mr. Davis is 80 years old and has won many victories in constitutional cases before the Supreme Court.

Thurgood Marshall of New York, thirty-five years younger than Mr. Davis, was his principal opponent.

Mr. Marshall is special counsel for the National Association for the Advancement of Colored People. He has been a leader for years in legal proceedings involving the rights of Negroes.

Other Negro lawyers arguing against segregation included Spottswood Robinson 3d of Richmond,Va.; Robert L. Carter of New York, Assistant special counsel of the National Association for Colored People, and James M. Nabrit,Professor of Law at Howard University, Washington.

Throughout the arguments, the Negro attorneys contended that segregation was unconstitutional on any ground or in any circumstance. They asserted that one purpose of the Fourteenth Amendment was to abolish segregation in the public schools and "wipe out the last vestige of slavery."

INTENT OF CONGRESS CITED

Mr. Davis declared that it was not the intent of the Thirty-ninth Congress in passing the Fourteenth Amendment in 1866 and submitting it to the States that it would outlaw school segregation. Others supporting this argument were J. Lindsay Almond, Jr., Attorney General of Virginia, and H. Albert Young.Attorney General of Delaware.

They maintained that the state laws that segregated Negro and white children in separate schools did not contravene the Constitution.

Lawyers for the Negro plaintiffs asserted that the doctrine of "separate but equal" facilities laid down by the Sipreme Court in the case of Plessy vs. Ferguson in 1897 had been used since that time to perpetuate unconstitutional practices and should now be set aside.

Attorneys for the states maintained that this was sound doctrine that did not deprive Negroes of any constitutional rights. They said that it had standing as a legal code on which many states had based their public school systems, and that the high court lacked judicial power to invalidate the doctrine.

The Federal Government, through the Justice Department, entered the hearing as a "friend of the court". It argued that school segregation based on race or color was unconstitutional under the Fourteenth Amendment.The Government also joined the Negro attorneys in telling the Supreme Court that it had ample power and a firm obligation to decide the segregation unconstitutional.

The South Carolina, Virginia and Kansas cases were argued Monday and Yesterday. The District of Columbia and Delaware cases were argued today.

Milton D. Korman, assistant corporation counsel,argued for the District of Columbia. The appeal in this case was from a ruling of the Federal Court of Appeals that laws segregated schools here were unconstitutional.

SEGREGATION HELD REQUIRED

Mr.Korman traced the history of segregated schools in Washington and the legislative actions taken by Congress in regard to it.Tha fact that since the first segregation law was passed in 1862 until the present Congress had maintained and continuously appropriated funds for separate schools was evidence,Mr. Korman argued, that Congress believed it was in the public interest to educate Negroes and whites in different schools.

"The present acts of Congress require segregation, and they are constitutional," Mr. Korman asserted.

Times
Thurs. 12-10-53
New York, N.Y.
(Typewritten -copied from page.24.)

Photograph on p. 24.
ARGUE SCHOOL SEGREGATION: Three of the lawyers arguing in the U.S. Supreme Court issue of racial segregation in public schools chat in lawyers' lounge of the court. They are, left to right, John W. Davis of New York, representing South Carolina; J. Lee Rankin, Assistant U.S. Attorney General, and Thurgood Marshall of the anti-segregation forces.

THE NATION

Ike Tells High Court To Outlaw Segregation

THE Eisenhower Administration told the Supreme Court that it wanted to outlaw racial segregation in the nation's public schools. Assistant Attorney General Lee Rankin said the Department of Justice believed that segregation in the public schools "cannot be maintained under the 14th amendment."

The amendment prohibits any state from passing legislation that denies "to any person . . . the equal protection of the laws."

The argument Rankin made before the court was similar to that made by the Truman Administration.

Last June, the court postponed a decision in five cases challenging the constitutionality of school segregation laws in Delaware, Kansas, South Carolina, Virginia and the District of Columbia, and asked lawyers for those states and the Federal government to reargue the cases this fall.

Rankin said the Administration believes that segregation should be abolished speedily but conceded that many problems would arise should the justices rule against segregation.

Justice Robert Jackson pointed out that the court's decision may affect only the specific localities which have cases before it. When Rankin said he thought other communities would conform to a no-segregation ruling, Jackson replied, "I don't think the court can enter a decree on that assumption, particularly when the separate but equal doctrine has been in effect for 75 years. The only people we can reach are those before us."

Jackson said he thought the court would have to proceed "school district by school district."

Attorneys for the states contended that the 14th amendment was not intended to end racial discrimination in public schools.

Segregation in Court

On June 13, 1866, The New York Times reported the Thirty-ninth Congress' adoption of what later became the Fourteenth Amendment as follows:

The [amendment was] called up today by Mr. [Thaddeus] Stevens * * * [The Democrats] regaled the House with the usual Democratic platitudes of the rights of [Southern] rebels and the propriety of letting [their] treason go unpunished. On the other side Mr. Stevens' speech was couched in solemn and dignified language and was more devoted to mourning for what had not been accomplished by the amendment than to congratulations for any vital principle embodied in [it]; but with a faith and resignation which it is to be hoped will in time assuage all his disappointment, he submitted [it] to the call of the roll whereupon it was agreed to by yeas 120, nays 32, there being 32 members absent.

Questions on 14th

Two years later, after three-quarters of the states had ratified it; the most controversial of the Reconstruction Amendments became part of the Constitution. The Fourteenth Amendment prohibits the states from making any law "which shall abridge the privileges" of any of its citizens or deny them "equal protection." But whether this means that it bars the states from segregating Negroes is a question still being fought out in the courts.

Last week in Supreme Court another round in the battle began. At issue was the question of the separation of Negro and white children in different schools in South Carolina, Virginia, Delaware, Kansas and the District of Columbia. The case had been presented to the high court last December but in June the court asked for reargument.

The political and sociological pressures surrounding the whole question are intense. Seventeen states have laws requiring school segregation; four states have laws permitting it. The Eisenhower Administration — like the Truman Administration—has taken a strong stand against segregation in education. But many Southerners maintain that a decision barring segregation would upset the whole fabric of society; some predict that the South would abolish the public school system rather than permit mixed education.

When the court convened last Monday, public interest ran high. The main arguments involved the scope of the Fourteenth Amendment. The chief attorneys were John W. Davis, Democratic candidate for President in 1924, who argued in favor of segregation, and Thurgood Marshall, counsel for the National Association for the Advancement of Colored People, who argued against segregation. These were some of the main points:

For segregation. When Congress and the states adopted the Fourteenth Amendment, they "did not contemplate the abolition of segregation in public schools. Moreover the Supreme Court ruled in 1896 that segregation did not violate the Fourteenth Amendment, provided equal public facilities were made available to both Negroes and whites, and seven times since then the high court has upheld the validity of this 'separate but equal' doctrine." Under the Constitution the state has "sole power to educate its citizens."

Opposing View

Against segregation. Congress and the states adopted the Fourteenth Amendment in order to strike out the discriminatory "black codes" enacted by Southern states after the Civil War. Under the amendment the states are deprived "of any power to make racial distinctions." The "separate but equal" doctrine is not valid because separation in itself denotes inequality. "We are not in the position expressed in George Orwell's satirical novel, 'Animal Farm,' in which, after a revolution by the animals and a dictatorship has been set up and a sign put on the barn: 'All animals are equal,' that sign is changed to 'But some animals are more equal than others.'"

The court is expected to take months before rendering a verdict.

School Bias Issue Up to High Court

Debate Ended, Ruling by June

By Don Irwin

WASHINGTON, Dec. 9.—The Supreme Court took under advisement this afternoon one of the most controversial issues it has weighed in modern history—the question of the constitutionality of segregating Negro and white pupils in public schools.

Debate over segregation laws in Delaware and the District of Columbia wound up eleven hours of intensive argument that began Monday and occupied the court until today. The root of the issue is whether the court is both empowered and required by the Constitution to outlaw segregation, as anti-segregation lawyers contend, or whether law and precedent require the matter to be left with state legislatures, as is demanded by supporters of segregation.

The court's ruling, expected before its present term ends in June, will deal directly with five related suits re-argued this week after the court found gaps in arguments heard a year ago. The court's action will either sustain or radically alter school organization and local customs in seventeen states and the District of Columbia, where segregation is mandatory. It is permitted by local action in four other states.

The District of Columbia case heard today had a bearing on earlier arguments involving Virginia, South Carolina and Nebraska, in that one of the principal points at issue was whether Congress had deliberately initiated segregated schools in the District in the Civil War and Reconstruction eras.

Supporters of segregation, including John W. Davis, 1924 Democratic Presidential candidate, argued earlier this week that the thirty-ninth Congress had no intention of disturbing the system when it initiated the Fourteenth Amendment in 1866. The amendment's assurance of equal protection for all citizens is the keynote of the case against segregation.

Says Congress Must Ad

Today, Milton D. Korman, the District's assistant corporation counsel, argued that segregation here can be ended only by Congress, the District's legislature. He cited legislative history reaching back to 1862, when slaves were freed here, to show that Congress repeatedly has approved dual schools for the District and has, on at least two occasions, rejected proposals to end segregation.

"The present acts of Congress require segregation and they are constitutional," Mr. Korman told the court.

James M. Nabrit jr., counsel for the Negro parents' group that brought the case to the Supreme Court, emphasized that some of the cited laws were enacted before the Fourteenth Amendment was proposed, at a time when public education for whites was in "an elementary stage of development," and was an innovation for Negroes. He noted that there is no penalty in District law if segregation laws are broken.

Mr. Nabrit urged the court to bear in mind that both the Eisenhower administration, in an appearance yesterday by Assistant Attorney General J. Lee Rankin, and the administration of former President Harry S. Truman, had taken the position that segregation is unconstitutional and that the court has power to abolish it.

Problem for White House

In the event the court rejects this position, the District case may present the Administration with a problem on Capitol Hill. President Eisenhower is committed to wipe out every form of segregation here. If Mr. Korman's argument is sustained, it would appear to be up to Administration leaders in Congress to press for action.

In the last case presented before argument ended at 2:42 p. m., H. Albert Young, Attorney General of Delaware, urged the court to leave decisions in the matter to state legislatures. Maintaining that the authors of the Fourteenth Amendment understood that it did not abolish segregated schools, he said "history and tradition" dictate Delaware's system and denied that its purpose is to impose "inequality."

The Delaware case differs from all others before the court in that it was brought on an appeal by the state. It sprang from a state court decree directing admission of certain Negro pupils to white schools because they were not offered "equal" facilities. Mr. Young urged that the case be returned to the lower court.

Associated Press wirephoto

The three lawyers participating in arguments on public school segregation before the Supreme Court in Washington yesterday during a recess of the hearing. Left to right: John W. Davis, of New York, chief representative of the states upholding segregation; J. Lee Rankin, Assistant United States Attorney for the Federal government, and Thurgood Marshall, of New York, chief counsel for anti-segregation groups.

Dr. Tobias Gives Implications Of School Segregation Cases

By CHANNING H. TOBIAS
Chairman, Board of Directors
National Association for the Advancement of Colored People

The five public school segregation cases scheduled for re-argument before the U. S. Supreme Court beginning Monday, Dec. 7, involve much more than the issue of segregation in the particular school districts in South Carolina, Virginia, the District of Columbia, Kansas and Delaware. Technically, of course, the court will render its decision only on the cases before it. But the implications of the court's ruling extend far beyond considerations of what is to be done in these specific cases.

At ultimate stake is the future of the anachronistic system of segregation not only in education but also in all other phases of the public life of the nation. We of the National Association for the Advancement of Colored People have long maintained that segregation is a divisive, undemocratic device designed to perpetuate an obsolete caste system which flatly contravenes the basic ethical concepts of our Judaeo-Christian tradition. We have held that segregation per se is unconstitutional. Should the court uphold this point of view it could mean that all laws requiring or permitting racial segregation in schools, transportation, recreation, shelter, and public accommodations generally, would ultimately be invalid.

When Thurgood Marshall and the other NAACP lawyers associated with him address the nine justices of the country's highest tribunal they will argue the merits of the cases before the court. But implicit in their argument will be a challenge to the validity of all legislation which separates one American from another on the totally irrelevant basis of race, color, religion or national origin. They will contend, at least by implication, that integration cannot be a halfway measure. Our nation cannot remain half-integrated and half-segregated today any more that could continue half-ffree and half slave a century ago.

Importance of Cases Recognized

We, of course, do not know what decision the Court will render after hearing the arguments of our lawyers, the attorneys for the several states, and the spokesman for the United States government. We do know that the Court recognizes the importance of these cases. This was clearly indicated by the order to reargue the cases, the request that the Attorney General present the government's views of the issue, and the five vital questions posed by the Court.

The importance the NAACP attaches to these cases is demonstrated by the extensive research our legal department has undertaken in preparation for the argument. Mr. Marshall has secured the cooperation of more than 130 lawyers, law professors, historians, and other social scientists in digging up every related fact in connection with this paramount issue. Never before has such an array of scholarship and talent been assembled to prepare for a civil rights case. When they face the Court our lawyers will be fully confident of the validity of their arguments, the accuracy of their information and the soundness of their theory of law.

Likewise the advocates of continued segregation are aware of the significance of these cases. To argue the Clarendon County case, the State of South Carolina has retained the services of John W. Davis, the eminent constitutional lawyer and onetime unsuccessful Democratic party nominee for President. They have also the attorneys general of their respective states and private lawyers to represent them at the expense of the taxpayers, Negro as well as white. They are doubtlessly prepared to make the most of their arguments. The Department of Justice has assigned a staff under the direction of an Assistant Attorney General to prepare the government's argument. What position the government will take is not positively known at this writing. However, it is generally believed that the government will again contend that segregation is unconstitutional just as the Department argued last year at the hearing on this issue. It seems most unlikely that the new Republican administration will take a less forthright position against segregation than that taken by the preceding Democratic administration.

May Mean Beginning of End

If the Court decides that segregation per se is unconstitutional it will not mean the overnight liquidation of Jim Crow. It will herald the beginning of the end of this antiquated system. The end will not come until the last Jim Crow sign is removed from the most backward community in the Nation. But come, it will.

We are not in the least dismayed by the threats of Governors James F. Byrnes of South Carolina and Herman Talmadge of Georgia to abandon the public school system rather than have it democratized. We have greater faith in the common sense and fundamental decency of southern white people than do these two governors. We do not believe that they would rather have their children grow up in ignorance than have them taught in the same classrooms with Negro children. Nor do we foresee any of the dire consequences which the prophets of doom always predict whenever traditional mores are changed. The admission of Negro students to graduate and professional schools of publicly financed universities in 12 southern and border states occasioned no untoward incident. Indeed, it led to the breakdown of color bars in several private institutions in the region. Nor was there widespread bloodshed following the abolition of the "white primary" in the South, as predicted.

Growning Acceptance in Dixie

The South is more mature than some of its spokesmen would have us believe. There is mounting evidence that a constantly growing segment of southern whites is ready to accept the end of segregation. Editorial comment in the Southern press indicates a desire to comply with the Court's ruling and rejection of the Byrnes-Talmadge proposal to abandon the public school system. Church groups, units of the organized labor movement, students, youth organizations and others in the South of both races have gone on record as opposed to the continuation of segregation.

As our lawyers argue for an integrated, democratic public school system they will have the practically solid support of Negroes in all sections of the country, as well as the endorsement of the most enlightened elements of all races and faiths in all parts of the country. Against them will be arrayed the spokesmen for the most benighted elements in the country, he professional hate-mongers, the timid souls who always fear ang, the reactionaries who continue to look backwards to the nineteenth Century, the weak and insecure who dread the possibility of meeting other groups in free structure of democracy. But if change, the reactionaries who con- and open competition.

The public school system is one of the foundation stones in the this stone itself is crumbling because of segregation it endangers the entire structure. In fighting to eliminate segregation in public school education, the NAACP is fighting to strengthen American democracy.

CIO Urges High Court To End Jim Crow

The CIO, in a "friend of the court" brief filed with the U. S. Supreme Court in the public school segregation cases due for re-argument on Dec. 7, urged an order abolishing classroom racial distinctions "forthwith," instead of by a "gradual readjustment," if the practice is found unconstitutional.

The CIO also restated its conviction that "segregation in public schools on the basis of race violates the Fourteenth Amendment per se." The amendment prohibits enactment or enforcement of legislation denying "the equal protection of the laws" to "any person."

12d 1953

Segregation Hearing: Political Implications

Herald Tribune
Jun. 12-13-53
New York, N.Y.

By Don Irwin

WASHINGTON

Political as well as social implications are wrapped up in the historic question of the constitutionality of racial segregation in public schools, which was reargued for three days last week before the Supreme Court.

However the court rules on the thorny question it now has under advisement, the very forcing of the long-dormant issue toward a decision by the high court poses unavoidable problems for both major parties.

Among those who face political consequences however the court rules are: Democratic leaders in segregated states; Northern Democrats, and Republicans in general, both as politicians and as officials.

17 Segregation States

Predominantly Democratic office holders in the seventeen states where school segregation is now mandatory face inevitable problems if there is a finding that "separate but equal" schools violate the Constitution's Fourteenth Amendment,

In at least three Southern states—South Carolina, Georgia and Mississippi—plans are afoot to counter any decree against segregation, even to extend of creating "private" schools for white pupils.

Behind such plans is a belief among Southern leaders that white voters will overwhelmingly resist any change in the pattern of segregated schools that has been a tradition since the first Negro schools were formed there for liberated—and completely uneducated—slaves.

If this feeling is as strong as is evidently believed by such leaders as Gov. Herman Talmadge of Georgia, it bodes trouble and a sharp shifting of lines for those conservative Southern Democrats who withheld support from the party's ticket last fall and even backed President Eisenhower.

8:3

One of these was Gov. James F. Byrnes of South Carolina. He has steered through his legislature a stand-by consitutional amendment eliminating provision for public schools and paving the way for segregated "private" schools. Gov. Byrnes, like many other Southerners, may have taken with a grain of salt the President's campaign declarations against racial segregation, but will probably take a dimmer view of the strong Administration stand against school segregation last week before the Supreme Court.

Similarly, the Administration's fight on school segregation would appear to hurt Republican chances to repeat any time soon the 1952 performance, when Gen. Eisenhower carried four Southern states.

Task for Both Parties

While it promises to unify Southern Democrats, a decree against segregation may prove an over-all political benefit to the Republicans by restoring to the party some of the traditional Negro support at the polls which it lost to the Democrats during the New Deal.

Such a trend would depend in part on how skillful strongly anti-segregation Northern Democrats are in dissociating themselves from the activities of their party's Southern wing—and on how well Republicans bring home the fact that their Administration went all-out against segregation before the court.

Court Told It Can End School Bias

Herald Tribune

By Don Irwin

WASHINGTON, Dec. 8.—The Administration told the Supreme Court today that it can and should overturn the mandatory school segregation laws now prevailing in seventeen states and the District of Columbia.

"It is the position of the Justice Department that segregated public schools cannot be maintained under the Fourteenth Amendment," Assistant Attorney General J. Lee Rankin told the court. Appearing on the second day of reargument of the knotty issue, Mr. Rankin made the statement under heavy questioning as he argued in support of a brief submitted by the Justice Department as a "friend of the court."

The brief offered last week by Attorney General Herbert Brownell jr., said the court has authority to outlaw segregation, as is proposed in five suits being considered jointly by the court, but did not specifically urge the step, as had his Democratic predecessor, James P. McGranery..

Mr. Rankin's statement was prompted by a question from Associate Justice Stanley F Reed as to whether the court has the power to end segregation.

Says Court Has Power

"The government's position is that it does have that power," Mr. Rankin replied, "by reason of the power given it under Section 1 of the Fourteenth Amendment."

The section, on which Negro attorneys are basing their fight to end the pattern of school segregation that has prevailed in the South for seventy-five years, states: ". . . no state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Asked by Justice Reed the provision on which he based his position, Mr. Rankin replied that he relied on the "equal protection" and "due process" clauses.

The justices questioned Mr. Rankin on the procedure he would recommend in the event it decides that segregation laws are invalid. He suggested that the defendant governments—Virginia, South Carolina, Delaware, Nebraska and the District of Columbia—be given a year to present plans to carry out the court's order.

Conceding that many problems would have to be settled, he suggested that affected school districts be required to satisfy lower courts as to the length of time that would be required.

Associate Justice Robert H. Jackson pointed out that no state government was directly involved, that the suit before the courts are against local school districts. He voiced concern that there would be "a generation of litigation."

Justices Jackson and Felix Frankfurter asked if the department could suggest any criterion for action that would be applicable as well to districts that comply quickly and those that delay, either willfully or because of lack of facilities.

Mr. Rankin suggested that the court lay down "broad general principles," leaving it to lower courts to see that they are followed.

Plea by Virginia

Earlier, two Virginia attorneys urged the court to show "judicial restraint" and let state Legislatures make the final decisions, while Thurgood Marshall, attorney for the National Association for the Advancement of Colored People, held that the court has no choice but to overthrow the doctrine of "separate but equal" white and Negro schools.

J. Lindsay Almond, Virginia Attorney General, told the court his state is embarked on a $75,000,000 school-building program and, in the event of an adverse decision, would have to decide whether to set up "one system or three"—one mixed, one white, one Negro.

T. Justin Moore, counsel for the Prince Edward County School Board, which is defendant in the Virginia suit, held that any change in the "separate but equal" doctrine adopted in 1896 in a transportation case would defy both precedent and the Constitution. He argued that there was no attack on segregated schools when the Fourteenth Amendment was adopted in 1866.

Mr. Marshall, speaking in rebuttal, suggested, as did Mr. Rankin, a one-year adjustment period to meet administrative problems of school integration. He said the principal argument for segregation is that it has never been upset and attacked arguments that Negroes would lose more than they gained if it is ended.

"I, for one, have more confidence in the people of the South—white and colored—than the alwyers on the other side," Mr. Marshall said. "The people are just as law-abiding as anyone else."

SEGREGATION IN SCHOOLS HIT BY BROWNELL

Tribune
Oct. 11-28-53

Tells Court It Can Bar Practice

BY ROBERT YOUNG

[Chicago Tribune Press Service]

Washington, Nov. 27—The justice department today told the Supreme court it has the authority to order an end to racial segregation in public schools.

Atty. Gen. Brownell declared in a 188 page brief filed with the court it is the duty of the high tribunal and within its power to outlaw discrimination of any kind against anyone because of color. The court had invited the attorney general to file the brief.

The Supreme court is considering five cases challenging the constitutionality of segregation in public schools. The school systems of Kansas, Delaware, South Carolina, Virginia, and the District of Columbia are involved. Fourteen other states require segregation of white and Negro school pupils and an additional three permit it.

Further Briefs Asked

The pending cases originally were argued several months ago. Last June, the court ordered the cases re-argued in December. The parties involved were instructed to submit additional briefs answering specific questions regarding the legislative history of the 14th amendment to the Constitution and its ratification by the states. The new arguments are scheduled to begin Dec. 7. The justice department intervened during the Truman administration as a friend of the court and argued school segregation is unconstitutional.

Brownell's brief contended the 14th amendment "compels a state to grant the benefits of public education to all its people equally without regard to differences of race or color." Asserting the question is not whether there is equality as between schools for white and Negro pupils, the brief told the high court the Constitution requires that there be "equality as between persons." Years ago the Supreme court promulgated the doctrine that the states must provide equal school facilities for whites and Negroes if there were segregation.

Notes Intent of Congress

One of the principal provisions of the 14th amendment, adopted in 1868, declares that no state shall enact any law "which shall abridge the privileges or immunities of citizens" or "deny to any person within its jurisdiction the equal protection of the laws."

The justice department brief said the legislative history surrounding ratification of the amendment by the states is too meager to determine how the states interpreted the amendment. But, the brief continued, while it cannot be established conclusively that the Congress which proposed the amendment understood it would abolish racial segregation in the public schools, "there is ample evidence that it [Congress] understood the amendment established the broad constitutional principle of full and complete equality of all persons under the law and that it forbade all legal distinctions

on race or color."

"Broad Principle" Stated

The brief argued Congress "did not pause" to list in detail all the specific applications of the basic principle which the 14th amendment incorporated into the Constitution, but there is "some evidence" this broad principle "was understood to apply to racial discriminations in education."

Brownell proposed that if the Supreme court abolishes public school segregation, the court [1] decree that segregation is a violation of constitutional rights; [2] direct the lower federal courts to enter decrees prohibiting school authorities "from using race or color" as a basis for determining admission of children to public schools under their control," and [3] permit a reasonable length of time for integrating white and Negro school systems.

Military Example Cited

The brief attacked the argument that there will be "popular antagonism . . . arising from a traditional hostility to the mingling of the races" should the Supreme court end school segregation. Citing the elimination of segregation in the military services as an example, the brief commented:

"We believe it would be futile and irrelevant to enter into such speculation. Recent years have witnessed, on a fairly large scale, an ever increasing trend toward the elimination of racial segregation and discrimination in all fields and in every part of the country. In almost every instance this progress has been accomplished without disorder or friction."

The Court and Segregation

It has been a year since the Supreme Court heard the first set of arguments on the constitutionality of segregation in the public schools. Last June, before adjourning for the summer, the court addressed five questions to the lawyers on both sides. The queries sought a lot of additional information. What, for instance, was the intent back of the Fourteenth Amendment in 1868? Did Congress and the states understand that the amendment was to outlaw racial separation in the schools then or later? Does the Supreme Court have the power to construe the amendment as meaning that segregation is a denial of equal protection of the laws? And if the court does decide that segregation is unconstitutional, must the change be all of a sudden or can it be instituted gradually? Then, lastly, what should be the legal mechanics for such a change?

There is no use trying to guess what the nine Justices were thinking about. It seems safe to suppose, however, that at least some of them are disposed toward breaking new ground. As a matter of fact the court has already got pretty close to the constitutional question in the various decisions which broke down the color line in graduate and professional schools, but without actually passing upon the validity of segregation. Whether the court will say yes or no remains to be seen, but the nature of the questions certainly implies that a search for practical solution is under way.

It is plain that a social revolution is calmly in progress, that the Negro is slowly gaining all that equality which the Fourteenth Amendment abstractly envisaged. The fact is there—segregation, by one pressure and another, is on the way out. And as the Supreme Court wrestles with law and conscience, its problem appears to be how far and how fast to go.

Racial integration in the schools will be hard to accomplish. But there is no good reason for saying out of hand that the thing is unworkable and impossible. All the evidence is the contrary. Every race question—housing, the vote, equal treatment in the armed services, to mention only a few—has brought an accepted solution. The same should go for the schools. For the benefit of the fearsome and the hot-headed alike, the following words by Dr. Guy B. Johnson, of the University of North Carolina, make good sense: "Any one who thinks that the transition from segregation to racial co-education can be made without problems, tensions, and even personal tragedies is a fool. Any one who thinks that the transition means the end of civilization is also a fool. The operation may be serious, but the patient will recover. And when he recovers and looks back over his experience, he may say: 'Well, it wasn't half as bad as I thought it would be.'"

Herald Tribune—United Press telephoto

Part of the crowd lined up yesterday to hear argument in Supreme Court at Washington on segregation in public schools. Story is on Page 1.

School Bias Argument Tomorrow

WASHINGTON, Dec. 5 (AP).—The Supreme Court will hear more arguments Monday on racial segregation in the public schools—a Constitutional issue which some Southern states say may force them to set up and finance private schools.

The court carefully examined the question last term on the basis of five test cases from South Carolina, Virginia, Delaware, Kansas and the District of Columbia, but found the matter so complex it ordered more arguments this fall.

The tribunal posed questions of Constitutional history and law which attorneys for both sides answered in thick briefs filed this week. Monday's oral arguments will be on the claims made in the briefs.

All Seats Gone

Since October, court attaches have been turning down requests for seats for the revived courtroom drama. The cast of lawyers will feature the same protagonists who spearheaded arguments a year ago.

They are John W. Davis, eighty-year-old Constitutional expert who represents Virginia and South Carolina, and Thurgood Marshall, forty-five, attorney for the National Association for the Advancement of Colored People, who has won many civil rights cases for his race. Both are from New York.

The challenge, which Negroes have tried for thirty years to get before the court, has political and social overtones of major importance to the Eisenhower administration and the country in general.

14th Amendment

The Negroes say segregation is an outgrowth of slavery and in itself, constitutes inequality, regardless of whether school facilities are good or bad. They rely on the Fourteenth Amendment to the Constitution which forbids states to deny any person "equal protection of the laws."

U. S. Claims Right to Ban School Bias

By Raymond J. Blair

WASHINGTON, Nov. 27.—The Justice Department, in the first public statement by the Eisenhower administration on what is undoubtedly the most important and the most politically explosive issue before the Supreme Court, told the court today it has authority to outlaw racial segregation in the public schools.

The department's opinion was set forth in an 188-page brief filed with the tribunal by Attorney General Herbert Brownell jr. The document set forth the government's answers to a series of questions raised by the Supreme Court in June, when it ordered the school segregation cases re-argued before its beginning Dec. 7.

By its stand the Administration obviously was running the risk of losing the support of those Southern states which voted for President Eisenhower a year ago. South Carolina and Georgia have threatened to abolish their public schools if segreagtion is declared unconstitutional. They have said they will set up a system of subsidized private schools.

South Carolina failed by a narrow margin to go for Gen. Eisenhower in the last election, but its Governor, James F. Byrnes, has been a strong Eisenhower supporter and a foe of the Truman administration.

The first angry Southern reaction here to the Brownell brief came from Rep. E. C. Gathings, D., Ark. He condemned the brief as an attempt to circumvent Congressional will and called on Congress to pass legislation barring court action aimed at ending race segregation in Southern schools.

"Congress has refused consistently year in and year out to pass laws destroying segregation," Rep. Gathings said. "This is an attempt by the Justice Department to circumvent the will of the people as expressed through their representatives in both Houses of Congress . . .

"The Constitution of the United States does not confer upon the national government any jurisdiction whatever over the systems of education in the several states."

This view is the same as that expressed by Southern spokesmen in previous arguments before the high court. The Attorney General of Delaware, for example, contended that the Supreme Court had no power to do by judicial decree what Congress had failed to do by legislation—that is, outlaw segregation in schools. He said this was a legislative, not judicial problem. This argument prompted the court to ask the participants in the case for their views on this legal point.

The Justice Department, arguing today that this was a matter the Supreme Court could settle, said: "Congress and the court have concurrent power, each within its own proper sphere, to enforce the Fourteenth Amendment . . . an available judicial remedy for violation of the amendment cannot be, and has never been, withheld merely because Congress has not found it necessary to enact general remedial legislation."

The Fourteenth Amendment provides that no state shall make or enforce any law that abridges the privileges or immunities of citizens of the United States.

The department brief also said the question before the court was whether the amendment gave state Legislatures a choice between racially separate or mixed schools.

"This is not a question of legislative policy but of constitutional power—and it is a question which under our system of government must ultimately be determined by this court on the basis of its construction of the Fourteenth Amendment," the brief said.

The court has under consideration five cases which challenge the constitutionality of public school racial segregation. They involve the school systems of Virginia, South Carolina, Kansas, Delaware and the District of Columbia.

The Justice Department intervened in the case during the Truman administration and argued that segregation was unconstitutional. Although today's brief was restricted to answering the relatively narrow specific questions raised by the court, Justice Department sources emphasized that the department under Mr. Brownell concurred in the broader general conclusion by the Democratic-controlled department that segregation should be outlawed.

Another question asked by the court was whether Congress, when it approved the Fourteenth Amendment, understood it would abolish segregation in public schools, and whether the states understood this also in ratifying it.

On this, the brief said the legislative history in Congress is not conclusive, nor is the available material on the state ratification proceedings.

But, the department said: "In sum, while the legislative history does not conclusively establish that the (thirty-ninth) Congress which proposed the Fourteenth Amendment specifically understood that it woud abolish racial segregation in public schools, there is ample evidence that it did understand that the amendment established the broad constitutional principle of full and complete equality of all persons under the law, and that it forbade all legal distinctions based on race or color."

Atty. Gen. offers advice to hi court

Eisenhower aide says states lack power to discriminate

By LOUIS LAUTIER

WASHINGTON (NNPA)—The Eisenhower Administration Friday entered into the five school segregation cases by filing its brief for the United States in the Supreme Court and throwing the weight of its opinion on the side of the advocates of ending segregation in public schools.

The brief is limited to a discussion of the five questions which the court, in ordering the cases reargued, on Dec. 7, directed opposing lawyers and invited the Attorney General, to discuss in their briefs and on oral argument.

At the outset, the brief states that the United States is not a party in the litigation and is participating in the cases solely as a friend of the court. The brief is submitted, the Justice Department states, "as an objective non-adversary discussion of the questions stated in the court's order of reargument."

Approach Differs

The objective approach of the Eisenhower Administration differs from the approach taken by former Attorney General James P. McGranery, who filed a brief for the Truman administration in these same cases a year ago.

Mr. McGranery took the position that the United States had an interest in the outcome of these cases and that racial discrimination in the United States is a source of constant embarrassment to the federal government in the day-to-day conduct of its foreign relations and jeopardizes the effective maintenance of the moral leadership of the free democratic nations of the world.

If the court should reach the question of whether the "separate but equal" doctrine should be re-examined or overruled, Mr. McGranery urged the court to do so.

Cites History

The Eisenhower brief, signed by Attorney Herbert Brownell Jr., made no attempt to reexamine any of the questions argued at the last term.

In answering the court's questions, a good part of the Brownell brief is devoted to an account of the legislative history of the Thirteenth Amendment abolishing slavery, the Fourteenth Amendment forbidding racial discrimination by state action, and the Civil Rights Acts designed to insure equal rights to the freed colored people.

Like the McGranery brief, however, the Brownell brief suggested that if the court should hold segregation in public schools unconstitutional, the cases should be remanded to the trial courts with directions to carry out the decision "as expeditiously as the particular circumstances permit."

States Involved

The NAACP, in its brief, asked the court to enter a decree directing that colored children involved in four cases be admitted immediately to public schools in Virginia, South Carolina, Kansas, and Delaware.

The children in the Delaware case were admitted to white schools in New Castle County by order of the Delaware courts, which found that the colored schools were inferior to the white schools.

Attorneys for the petitioners in the District of Columbia case asked the court to declare that the action of the board of education and school officials in the District of Columbia in maintaining racial segregation is unlawful and directing that such discrimination be discontinued immediately and colored pupils admitted to Sousa Junior high school no later than the beginning of the next school year.

Urge Full Equality

In answer to the court's questions, the Brownell brief stated that—

1. The primary and persuasive purpose of the Fourteenth Amendment, as is shown by its history and as has been repeatedly declared by the Supreme Court, was to secure for colored people "full and complete equality before the law and to abolish all legal distinctions based on race or color."

2. The legislative history of the Fourteenth Amendment in Congress is not conclusive that it was understood it would abolish segregation in the public schools.

Court Has Power

3. The available material relating to the ratification proceedings in the various state legislatures is too scanty and incomplete, and specific references to school segregation too few and scattered, to justify any definite conclusion as to the existence of a general understanding in such legislatures as to the effect which the amendment would have on school segregation.

4. It is within the judiciel power to direct such relief as will be effective in eliminating existing segregated school systems.

5. If the court should hold that laws providing for segregated schools are unconstitutional, it should remand the five cases to the lower courts with directions to carry out the decision "as expeditiously as the particular circumstances permit."

Questions Recalled

The first two questions the court directed the lawyers to discuss were:

1. What evidence is there to determine whether Congress, in submitting the Fourteenth Amendment, and State Legislatures or conventions, in ratifying it, contemplated or understood that it would abolish segregation in public schools.

2. If there is no such evidence, was it the understanding of the framers of the amendment that (a) a later Congress might abolish such segregation under the section giving Congress authority to enforce its provisions, or (b) it was within the judicial power, in the light of future considerations, to construe the amendment as abolishing such segregation of its own force.

The other questions were:

3. If the evidence submitted does not dispose of these two questions, is abolition of segregation in public schools within the judicial power, in construing the amendment?

4. If it is decided the segregation in public schools violates the Fourteenth Amendment, (a) would a decree necessarily follow that colored children must be admitted immediately to whatever public school they choose within their school districts, or (b) could the court exercise its equity powers to effect the change gradually?

5. Assuming that the court would exercise its equity powers, should it formulate detailed decrees, and, if so, on what specific issues, or should the court appoint a special master to hear evidence and recommend specific terms, or should the cases be sent back to the lower courts with instructions to frame decrees, and, if so, on what directions and procedures.

Full Freedom

The congressional history of the Fourteenth Amendment shows that the amendment was proposed and debated as part of a broad and continuing program to establish full freedom and legal equality for colored people, the Brownell brief states, adding:

"Many of the Congress which considered the Thirteenth Amendment understood it to abolish not only slavery but also its concomitant legal discriminations. This understanding rested on a belief that that amendment had made the colored man an indistinguishable part of the population and hence entitled to the same rights and privileges under the laws as all others.

"The enactment of the Black Codes in the Southern states made it obvious, however, that additional protection by the national government was required."

The Brownell brief points out that civil rights legislation enacted by the 39th Congress was designed to strike down racial distinctions. From the debates on that legislation, it adds, came the view that the Thirteenth Amendment was not sufficient for such action, and that a further amendment was necessary.

"In sum, while the legislative history does not conclusively establish that the Congress which proposed the Fourteenth Amendment specifically understood that it would abolish racial segregation in the public schools, there is ample evidence that it did understand that the amendment established the broad constitutional principle of full and complete equality of all persons under the law, and that it forbade all legal distinctions based on race or color," the Brownell brief declares, adding:

Principle Understood

"Concerned as they were with securing to the colored freedmen, these fundamental rights of liberty and equality, the members of Congress did not pause to enumerate in detail all the specific applications of the basic principle which the amendment incorporated into the Constitution.

"There in some evidence that this broad principle was understood to apply to racial discriminations in education, and that it might have the additional effect of invalidating state laws providing for racial segregation in the public schools."

The Brownell brief also says "the available materials are too sparse, and the specific references to education too few, to justify any definite conclusion that the state legislatures which ratified either the Fourteenth Amendment understood either that it permitted or it prohibited separate schools."

Debates Cited

No specific references have been found in the debates on the Fourteenth Amendment, the brief asserts, "to show any expressed contemporary understanding of its framers as to the judicial power, in light of future conditions, to construe the amendment as abolishing segregation of its own force.

"Some evidence of such an understanding is, however, found in the debates on the Civil Rights Act of 1875," the brief adds.

Opinions of the Supreme Court, extending over a period of more than three-quarters of a century, are quoted at length in the brief to show "a consistent recognition that the Fourteenth Amendment is to be construed liberally so as to carry out the great and pervading purpose of its framers to establish complete equality for colored in the enjoyment of fundamental human rights and to secure those rights against enforcement of legal distinctions based on race or color."

Contradicts Parker

The Brownell brief flatly contradicts the position taken by Chief Justice John J. Parker of the Fourth United States Circuit Court of Appeals in writing the opinion of the special three-judge case upholding segregation in public schools in the South Carolina case.

In that opinion Judge Parker said racial segregation in public schools presents "not questions of constitutional right but of legislative policy."

If the Fourteenth Amendment left a state entirely free to choose whether it would have segregated or racially mixed schools, the Brownell brief concedes, no federal court could substitute its judgment for that of the state.

But the question in the school segregation cases, the brief asserts, is whether the Fourteenth Amendment gives such a freedom of choice to a state.

It Is Court Problem

The question in those cases,

the brief insists, is not one of "legislative policy but of constitutional power—and it is a question which under our system of government must ultimately be determined by this court on the basis of its construction of the Fourteenth Amendment."

The judicial power to decide that racial segregation in public schools is not lessened because the right invoked arises under the Fourteenth Amendment, the brief states.

It points out that in countless cases the court has construed the amendment of its own force, without any implementing act of Congress as requiring "judicial invalidation of state action found to infringe rights protected by the amendment."

If it should now be held that the power of the court to enforce the Fourteenth Amendment depends upon implementing legislation, the brief states, "literally scores of decisions would have to be overruled."

Numerous Cases Cited

Among such decisions are listed the school discrimination cases beginning with the Gaines decision, in which the court held that the State of Missouri had to afford Lloyd Gaines a legal education within the State, at Lincoln University, or admit him to the law school at the University of Missouri.

Other cases in this category were the Sweatt case involving the admission of Herman Marion Sweatt to the University of Texas Law School, the McLaurin case in which the court held that G. W. McLaurin could be treated no differently than white students admitted to the University of Oklahoma Graduate School, and the Sipuel case, in which the court ordered Ada Lois Sipuel Fisher admitted to the University of Oklahoma Law School.

Rights Established

The brief asserts that it would be idle now to speculate whether the principle of equality before the law was violated by the continuation or establishment shortly after the Civil War in many states of separate schools for the children of the newly-freed slaves.

"The question now before the court is not whether conditions existing when these school systems began may have justified them, practically or legally," the brief states, adding:

"The question, rather, is whether, under the far different conditions existing today, a legal requirement that colored children must attend public schools where they are segregated solely because of their color deprives them of their constitutional right to equality in the enjoyment of public educational advantages and opportunities."

It might well have been argued prior to the decision in the Gaines case in 1939 that states could provide public education on a "separate but equal" basis, the brief states.

Is Individual Right

But the decision in the Gaines case made it clear that the function of the court in cases of that type "is not limited to appraising questions of fact concerning the physical equality of schools of facilities, and that its primary concern is whether the individual is being denied, because of race or color, equality of treatment in the opportunities, advantages, and benefits offered by the state.

The brief points out that in the Kansas school segregation cases, one of the five pending cases, the District Court found that racial segregation has a psychological impact on colored children and that the opinions in the Sweatt and McLaurin cases show that similar considerations were found "persuasive" by the court in holding that the plaintiffs in those cases were denied the equality of right secured them by the Fourteenth Amendment.

In neither the Sweatt nor McLaurin case, the brief states, was there any suggestion that the question presented was not justifiable, or that it involved the determination of matters of educational or social policy outside the judicial power, or that the constitutional question of segregation in higher education is in any respect different from segregation in elementary and high schools.

School Levels Similar

The brief also argues that the school segregation cases do not involve "political questions" beyond the authority and competence of federal courts to decide.

"A decision that racial segregation in public elementary and high schools is unconstitutional would be no more 'political' or 'legislative' than those which have ended segregation in higher levels of public education," the brief declares.

The brief concludes that the court "has undoubted power" in the five school segregation cases "to enter such decress as it determines will be most effective and just in relation to the interests, private and public, affected by its decisions."

In the concluding section of the brief, the Justice Department discusses the difficulties which may be met in carrying out a change to nonsegregated schools systems and various factors which appear to be relevant in framing the decrees.

Say Areas Differ

It points out that there are two types of obstacles to integration: (1) those of an administrative nature, and (2) those arising out of the fact that racial segregation in public schools has existed for many years in a large part of the country.

No single formula or blue print can be uniformly applied in all areas where existing school segregation must be ended the brief states. In some places like the District of Columbia, Kansas and Delaware, the changeover to a nonsegregated system should be "a relatively simple matter, requiring only a few months to accomplish," the brief states.

In other places, a longer period of time would be needed, depending on local conditions.

The Brownell brief agrees with the NAACP brief in asserting, however, that the burden of showing that immediate abolition of segregation in public schools is impracticable and of proposing a program for the changeover should rest on the states and the District of Columbia.

Is Unconstitutional

If the court should hold that segregation in public schools is unconstitutional, Justice Department attorneys suggest the decree provide:

1. That racial segregation in public schools is a violation of constitutional rights;

2. That each case be remanded to the lower courts for such further proceedings and orders as are necessary and proper to carry out the decision;

3. That the lower courts be directed to enter decrees under which the defendants (local school boards and school officials) be enjoined from using race or color as a basis for determining admission of children to public schools. But if the defendants show that it is impracticable or inequitable to admit colored children to nonsegregated schools at the beginning of the next school term, the court shall order the defendants to propose and, on approval by the court after a public hearing, to put into effective operation a program for a changeover to a nonsegregated school system as expeditiously as the circumstances permit;

Nine Sign Brief

4. That a period of one year be allowed from the receipt of the Supreme Court's mandate, with the lower court given discretion to extend the period for a further reasonable time if the situation so requires, and, if, within the fixed period, the requirements of the Constitution be not brought about, the lower court shall enter appropriate orders directing immediate admission of colored children to nonsegregated schools;

5. That the Supreme Court retain jurisdiction to enter such further orders and decrees as may become necessary for carrying out its mandate.

In addition to Attorney General Brownell, the Government's brief is signed by Assistant Attorney General J. Lee Rankin, Philip Elman, special assistant to the Attorney General, and Leon Ulman, William J. Lamont, David O. Walker, M. Magdalena Schoch, Joseph A. Mullin and John J. Cound, attorneys.

Public Schools Segregation Case Hearings Closed

WASHINGTON—The Republican Administration told the Supreme Court, in a hearing that in segregation in public schools cannot be maintained under the 14th Amendment.

Atty. Thurgood Marshall of the NAACP headed the battery of lawyers against segregation. John W. Davis spoke for South Carolina, favoring no change in the South's pattern.

Hearings were completed Wednesday. It may be days or months before the Court renders its decision.

Negro lawyers told the Court that already, white and Negro students were attending Southern colleges together, why not in public schools?

Atty. Marshall Thurgood Marshal led the battle against segregation in public schools at the U. S. Supreme hearing this week.

Brownell Appeals To High Court--

SEGREGATION BAN DEMANDED

Same Schools For All Races Are Called For

Separate Facilities Called Illegal

BY JAMES F. DONOVAN
United Press Staff Writer

WASHINGTON, Nov. 27—The Justice Department told the Supreme Court today the tribunal has both the duty and authority to outlaw public school segregation.

Atty. Gen. Herbert Brownell Jr., in an 188-page brief also assured the court such a decision on the explosive issue would be no more "political or legislative" than previous rulings which ended segregation in higher education.

The written argument, supplemented by a brief filed by the department under the Truman Administration, stated flatly that segregation is unconstitutional.

The supplement, answering specific questions raised by the high court last June, said the "primary and pervasive purpose" of the 14th Amendment "was to secure for Negroes full and complete equality before the law and to abolish all legal distinctions on race and color."

The court failed to reach a decision on the constitutionality of separate but equal public school facilities last term and scheduled re-arguments beginning Dec. 7.

It has under consideration five cases which challenge the constitutionality of segregation in the public schools of Virginia, South Carolina, Kansas, Delaware, and the District of Columbia.

Negro groups argue segregation in itself is discriminatory and unlawful even where separate facilities are equal. Attorneys for the states bank heavily on the time-honored "separate but equal doctrine" laid down by the Supreme Court in 1896.

The department's brief today represented the Eisenhower administration's first official expression of its attitude on this specific racial issue. President Eisenhower told his news conference Nov. 17 that he had been conferring regularly with Brownell on the issue.

The department said "a decision that racial segregation in public elementary and high schools is unconstitutional would be no more 'political' or 'legislative' than those which have ended segregation in higher levels of public education."

The department also threw down the argument that there will be "popular antagonism" in the states affected about the elimination of segregation "arising from a traditional hostility to the mingling of the races."

"We believe it would be futile and irrelevant to enter into such speculation," it said. "Recent years have witnessed, on a fairly large scale, an ever increasing trend toward the elimination of racial segregation and discrimination in all fields and in every part of the country."

High Court Lacks Power To End School Segregation, 3 States Claim

WASHINGTON, Nov. 30—Racial segregation in public schools is a states' rights question and the Supreme Court does not have power to declare it unconstitutional under the 14th Amendment, South Carolina, Virginia and Kansas asserted in briefs filed with the high court today.

South Carolina said the issue for the court to resolve was "whether the people of the state of South Carolina may, in the exercise of their judgment, based on first-hand knowledge of local conditions, decide that the state objective of free public education is best served by a system consisting of separate schools for white and colored children."

Kansas said it was dealing with "race problems in a manner most beneficial to all concerned" and that "federal interference is neither necessary nor justified."

Virginia asserted that a ruling that school segregation was unconstitutional "would overturn the established meaning of the amendment that the court should sustain state legislative action which is, as here found to be, reasonable on the particular facts."

In their briefs today, Kansas, South Carolina and Virginia all argued that the framers of the 14th Amendment did not intend it to end school segregation.

In a fourth brief filed with the clerk of the court, the District of Columbia took the position that the 14th Amendment applied only to states and did not control actions of the district.

The 14th Amendment forbids the states from enacting any law that abridges the rights and immunities of citizens of the United States. Appeals from lower court decisions that school segregation practices in South Carolina, Virginia, Kansas, Delaware and the District of Columbia violate the amendment are to be argued in the Supreme Court beginning next Monday.

It was suggested today that the procedings might turn out to be a case of Davis vs. Brownell. Herbert Brownell Jr., attorney general, filed a brief for the government upholding the authority of the Supreme Court to declare school segregation unconstitutional. John W. Davis, constitutional lawyer and Democratic nominee for president in 1924, will argue for South Carolina that the high court has no power under the Constitution to outlaw segregation.

Kansas, South Carolina, Virginia Challenge High Court Authority On School Segregation

WASHINGTON, Nov. 30 (AP)—Three states—Kansas, South Carolina and Virginia—today told the Supreme Court it has no grounds on which to declare racial segregation in the nation's school unconstitutional.

And the District of Columbia declared it could do nothing about integrating the schools here because Congress itself set up separate systems for the area. District counsel also argued that the principle of dual school systems does not violate civil rights or other guarantees of the Constitution.

Separate briefs filed by the three states and the district apparently completed the groundwork for three days of oral arguments on the historic segregation cases which open before the high tribunal Dec. 7. All principal parties involved have presented their written views which the court requested when it postponed a decision on the school issue last spring.

The high tribunal heard original arguments last year on a series of cases by parents of Negro children in Kansas, South Carolina, Virginia, Delaware and the District of Columbia. They have asked the court to decree that racial segregation in the schools violates the 14th Amendment.

Such a decision would overrule an 1896 Supreme Court ruling which has permitted states to maintain racially segregated school systems provided equal facilities were available for Negroes and whites.

Atty. Gen. Brownell, asking the court last week to outlaw segregation, had said it would require the revision of school laws in at least 17 states.

Leaders in some Southern states have said drastic changes will have to be made in their school systems if the court rules against segregation. Gov. Herman Talmadge of Georgia, who has said such a ruling would lead to bloodshed, won legislative approval last week of provisions for replacing the public schools with state subsidized schools if segregation is outlawed.

In their briefs today, Kansas, South Carolina and Virginia all argued that the framers of the 14th Amendment did not intend it to end school segregation. Kansas and South Carolina declared that federal interference with their schools "is neither necessary nor justified."

Delaware, which filed a brief earlier, says the constitutional The state contends it is merely disputing a lower court order which does not give sufficient time for the state to set up equal facilities under the segregated system called for under its constitution.

Netro parents, opposing the state in a brief filed today, charged that "the attitude of Delaware, shown to be hostile to Negro rights generally, was no less inimical to the Negro's opportunity for education."

Another brief calling for abolition of segregated schools was filed today by the American Veterans Committee, Inc., as "friend of the court." The organization said segregation had been abolished in New Jersey and no bloodshed has resulted.

Questions Answered

All the briefs answer questions asked by the high court last June. Basically, the court wanted to know whether the framers of the 14th Amendment intended it to end racial segregation in the schools. And the justices asked if they do decide against segregated schools should the states be permitted a gradual transition to non-segregated systems.

The 14th Amendment provides, among other things, that "no state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States." The amendment was adopted after the Civil War following approval of the 13th Amendment, which specifically abolishes slavery.

SEGREGATION CASE RE-ARGUED IN HIGH COURT

No Decision Expected Until Next Spring

Washington, Dec. 7 (AP)—Lawyers for Negro parents reopened in the Supreme court today the prolonged, momentous legal fight for a ruling that separate public schools for white and Negro children violate the Constitution.

The attorneys contended that segregation in itself is discriminatory and is outlawed by the 14th amendment to the constitution. This is true, they said, even if eparate schools provided for Negro pupils are just as good as those for white.

Court Has Power——U. S.

Spottswood Robinson III, Richmond attorney, opened up with an hour long argument that in putting thru the 14th amendment, Congress and the states "definitely contemplated and understood it would abolish segregation" in the public school system. The 14th amendment says no state may deny any person due process or equal protection of the laws nor abridge any person's privileges or immunities.

Opposing attorneys, including John W. Davis, Democratic candidate for President in 1924, stood by with arguments that the amendment never was intended to apply to public education, and that this position is bulwarked by numerous decisions of the Supreme court and federal and state courts.

The United States government, thru the justice department, is not asking outright that the Supreme court now abolish segregation, but it is saying the court does have the power to do so, because the 14th amendment's purpose was "to secure for Negroes full an dcomplete equality before the law and to abolish all legal distinctions based on race and color."

The basic issue before the court stems around the central question of whether the equal right and due process provisions of the Constitution do or do not forbid segregation in public schools. Attorneys for Negro complainants say yes. Opposing lawyers say no.

Doctrine 57 Years Old

The supreme court itself probably won't make its decision known for months, perhaps late next spring.

If it does wipe out segregation, it will be junking a doctrine more than a half century old. This is the "separate but equal" principle laid down in 1896 in a case involving accommodations on a southern train. The court said in this case that racial segregation is permissible if facilities provided for Negroes are equal to those reserved for whites.

The supreme court has indicated some concern over the impact of an end to segregation. In the cases now before it four states—Virginia, South Carolina, Kansas, and Delaware—plus the District of Columbia, are directly involved.

3 Days of Arguments

But besides these, 14 other states having compulsory segregation would be affected indirectly. So would millions of school children of both races.

The legal arguments today were the beginning of 11 hours of debate to be spread over three days, on the biggest issue considered by the Supreme court since Earl Warren became chief justice last Oct. 5.

When Historic Monday Comes, It May Take Race Issue Out Of Politics

BY JAMES FREE
News Washington Correspondent

WASHINGTON

SOME MONDAY in the Spring or Summer of next year the Supreme Court of the United States is going to come up with a history-making decision on segregation in public schools.

Whatever the court may decide on the question of whether segregated schools are constitution, the action will have controlling influence on the future of education in Alabama and 16 other states that operate separate schools for whites and Negroes. This is true also of the federally controlled District of Columbia.

While this forthcoming influence on public education has been widely recognized, there is another aspect of this important legal battle that has received far less national attention. That is the political side. It is not suggested here that the public is unaware of charges and countercharges by politicians of both major parties on the segregation issue. They have been too loud and numerous to be overlooked.

Republicans And Democrats Look To Big Cities

WHAT HAS been largely ignored in recent developments in the court controversy is this: Segregation in education is no longer a political issue between Republican and Democratic parties nationally. In this vital case the Eisenhower administration has taken substantially the same position that the Truman administration did. Atty. Gen. Brownell, like his Democratic predecessor, Atty. Gen. McGranery, claims school segregation is unconstitutional.

It is true that Alabama Republicans and Democrats for Eisenhower in Alabama may disagree with Mr. Brownell—just as definitely as Democrats in the state differed with Mr. McGranery last year. Yet this does not alter the fact that, nationally speaking, the big political parties are on the same side of the street in this controversy.

Not only is the Brownell and McGranery interpretation of the 14th Amendment similar, but it is clear that national policymakers for both parties will draft their civil rights platforms with increasing emphasis on appeal to population centers of the East, Midwest and West. Southern delegates called the key turns at both Republican and Democratic National Conventions in 1952. They are not nearly as likely to do so in 1956.

Racial Issues No Longer Are Party Issues

THE LATE Will Rogers popularized the saying that "the Supreme Court reads the election returns." Meaning, of course, that even the dignified justices are swayed, knowingly or not, by the trends in political thinking.

If this is so, segregation in public schools would appear to be doomed, even though its death knell may not come in the pending court test. Southerners may not accept this view, or if they accept it, they may not like it.

Whatever their opinions are, they must surely realize that future happenings in matters of racial segregation cannot be resolved on a Republican vs. Democrat basis. Certainly not nationally. And perhaps not locally either.

The segregation issue has been, to a large degree, taken out of party politics. And that, it seems to this reporter, is a good thing.

Political fights over racial issues have always gotten the big headlines. No doubt this will continue to be so. But the real progress in solving racial problems has come in the fields of economics, sociology, education and law.

In fact, progress might have been even faster if race relations could have been kept out of politics.

Could it be that a new era of nonpolitical approach to race relations lies ahead? Probably not. But it is encouraging that such an era does seem to be within our grasp.

12d 1953

EDUCATION

PUBLIC SCHOOLS

Behind Brownell's Inflammatory Brief

Herbert Brownell, Attorney General of the United States, has filed, as was his duty, a brief in the segregation case.

It should not surprise us that his brief was not merely a legal document, insisting strongly that the Supreme Court has the power, and should, eliminate segregation from the schools and the life of the nation, but an inflammatory political document, too.

One was his duty. Many people, perhaps a majority of them, have long and sincerely felt that segregation had no place in our country. But it was not his duty to write the brief so that it became a document deliberately calculated to inflame the sincere minority which strongly opposes him. There is very good reason for Southern leaders to feel as they do about the tone of it.

Nor should the filing of the brief have caused any criticism of President Dwight D. Eisenhower. He is not a politician. Therefore, he does not always speak in terms understood by those used to listening to political speeches. He made it very plain all through his campaign last fall that he was in favor of complete equality both in the field of race and religion.

To be sure, he somewhat typically confused the minds of many by speaking of his belief in states' rights and against dictation from Washington. And he spoke, too, of gradualism as opposed to violent change. The President undoubtedly feels that gradualism has long been at work in the field of education. As of today the State of Texas has had Negroes in its professional schools for some years, as has Arkansas. North Carolina and Virginia have had shorter experiences and in Kentucky a beginning has been made. This he properly would conceive of as gradualism in social reform. Also, it is entirely possible that he feels that the problem is not one of social reform but of citizenship in a country whose tenets guarantee no discrimination because of race, religion or color. He does not feel a court's rule is dictation from political Washington.

If fingers are to be pointed, let them by all means be pointed at those Southern leaders such as Gov. Shivers of Texas, Gov. Byrnes of South Carolina and the Byrd machine in Virginia, which acted the part of political Pied Pipers in falsely assuring their Democratic followers they would find states' rights in the Republican Party.

They must indeed feel like fools.

So if there are any fingers to be pointed, let them be pointed there—not at Dwight D. Eisenhower, who ran on the Republican platform.

* * *

As for Herbert Brownell, he is part and parcel of a group which has its eyes on the next GOP nomination. There is reason to believe that Brownell, in exhuming the political corpse of Harry Dexter White, and in the inflammatory tone of his segregation brief, already sees himself as the possible nominee in 1956.

Meanwhile, the South's brief is not yet in.

It will be filed this week.

It will contend—with some strong legal basis—that the court cannot act since the Congress has had ample time since the 1896 decision of separate but equal facilities to pass remedial legislation and has not done so.

It is entirely likely that the court may do this.

There is no assurance it will abolish segregation and the people must not be led into unnecessary fear and violence.

Also, even Brownell, inflammatory and political in tone, calls for a transition period. He asks for a year. If the court should decide along his lines, it will have too much sense to set up merely a year.

Meanwhile, the Brownell decision will speed the state proposal to set up legal methods to abolish the state school system, university and all. If that is done, as it will be if the court eliminates segregation, then we will just have to live with it until we solve it and re-establish our public schools. It is folly to think we can, or will, live always without them. Maybe we won't have to at all.

The court has not acted yet.

Let all of us in the South, seeing now the folly of the James F. Byrnes-Shivers leadership, keep calm and see it through as citizens of the greatest nation on earth—with liberty and justice for all.

RALPH

McGILL

The South Faces a Fact

What the various Southern state legislatures are doing, as they busy themselves with plans to carry on school segregation without legal compulsion, is admitting segregation by law is finished . . . either this year, next or within the next few to come.

It is. There is no need beating about the bush. Therefore it seems important that we discuss the problem as rationally as possible.

There are those who insist that segregation protects the "integrity" of both races. There are others who believe, with deep sincerity, Negroes are "better off" under it. Conceivably this might be argued with some logic. It does not matter. The world, in the throes of a social revolution which began with the coming of the industrial revolution, and which was tremendously accelerated by two great world wars, has moved on. Segregation by law no longer fits today's world.

Southern legislatures busy with plans to maintain some form of segregation without legal compulsion are wise to face that fact—though there are questions as to the wisdom of some of the proposals they make.

Policy

As a matter of fact, segregation has been on its way out for a good long time and has been breaking down at the edges for more than a generation. Surprisingly few Southerners, or Americans of other areas, know that for some years Negroes have been attending, and graduating from, medical, law and other professional schools in state universities in the South.

In the field of employment, segregation has for some years been changing, and in many other fields it also shows the signs, and influences, of our time.

Two great forces have been at work on segregation and the problem of race. One is secular, the other religious. The Christian of today cannot help but wince at the full implications, and the jarring clash of his creed, with discrimination against any person because of color. To send missionaries to colored peoples and then to argue that because of the color of skin the two may not, if they choose so to do, worship the same God together is an impossible contradiction.

Indeed, it is this very fact which causes our Communist enemies to be able to present us in a bad light before the Oriental and Asiatic peoples. They can say, with some truth, that our claims to Christian brotherhood and democracy are hypocritically untrue.

Christianity cannot well afford to be on the wrong side of a moral force, as it was in some areas when it defended slavery.

The other influence is secular. Segregation implies inferiority. There are those who argue that it does not. But, those segregated believe it does. There are those who say the fish never feels the hook. But, unfortunately, it is not possible to ask the fish. Across two great wars now we, along with other free peoples, have preached the rights of men everywhere to be free and equal—we have encouraged long-oppressed peoples to rise. They have done so, and to date the Communists, with great shrewdness, have exploited successfully many of these nationalistic revolutions.

Change

An end to segregation—when it comes—will not, of course, force people to associate socially. That will remain, as now, personal choice. But, it will bring on change—and this is what state legislatures in South Carolina, Georgia, Mississippi, Virginia and Alabama are, or will be, considering. They consider not how to retain legal segregation—which they see soon ending—but how to effect it without legal compulsion.

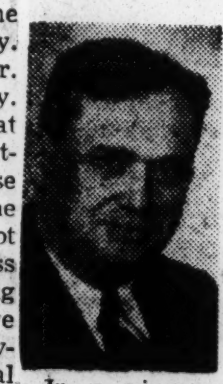
Their great opportunity is to do so without violence or rash deeds which later will have to be undone at great cost.

So, while it is true that much of the push behind ending segregation is political, and that many of those in both parties urge it hypocritically, it does not change the basic fact—segregation is on its way out and he who tries to tell the people otherwise does them great disservice. The problem of the future is how to live with the change.

RALPH

McGILL

Inflammatory Brief Is In



Attorney-General Herbert Brownell, legal representative of the United States, has filed his brief in the issue of segregation in the public school cases before the nation's Supreme Court.

In a vigorous, inflammatory, and political in tone, presentation of legal points, he goes all the way—end segregation, but provide a period of a year for transition.

These cases were argued en bloc (together) before the Supreme Court in December, 1952. The assumption then was a final decision would be forthcoming in the spring of 1953. But, just before the Court's summer recess at the end of June, the court ordered a complete reargument at the fall term. Date for it later was set to begin December 7. All parties

were requested to answer in briefs, later to be developed by oral argument, a series of questions.

The Court asked argument chiefly on three points:

1. — Did the Congress and the state legislatures intend to abolish racial segregation when they ratified the 14th Amendment?

2. — If the Congress and states, by ratification, did not intend immediately to end segregation, did the amendment open the way for congressional or judicial action in that field?

3. — If the court should ban segregation, must admission of Negroes to white schools, or vice-versa, be immediate, or can the court permit a gradual adjustment, possibly involving return of the cases to lower courts, or appointment of a special master, by the court, to suggest processes of adjustment?

Answer

It is to these queries that Attorney General Brownell has now filed answer. He says segregation can, and should be ended, and that a year for adjustment should be enough.

A layman, looking at the problem, out of a knowledge of history, even scanty, would guess that the court will itself immediately remove question number one. The coercive measures used to obtain ratification of the 14th Amendment in the several Southern states were so scandalous and corrupt, that Ohio, New York and New Jersey sought, unsuccessfully, to withdraw their ratification. Also, after ratification of the amendment, many states, some outside the South, set up segregated school systems. The answer to that question is almost inevitably "no."

Attorney-General Brownell, after conferences with President Eisenhower, has urged the court to base its decision on question three.

The Southern briefs are not yet in. They will be filed this week.

Delaware's is in. It argues the court has not the authority to rule out segregation because it is a matter for the Congress.

Paradox

Oddly enough, it is somewhat a strange parading that as the national baseball convention opens, the Southern briefs will argue on the basis of a baseball decision to retain the right of state decision until Congress acts. Recently the Supreme Court ruled that since an earlier decision in an anti-trust suit against baseball the Congress had had ample time to pass remedial legislation if it believed baseball's rules did violate the anti-trust statutes, and had not done so, the court saw no reason to reverse the decision.

It now will be argued that for identical reasons, the court should not reverse the "separate but equal" decision of 1896. The Congress, the Southern brief will say, has had adequate time to pass remedial legislation and has not done so.

So much for background.

There is always dismay when any decision is made which radically affects the nation's social fabric. This was true of the 13th and 14th Amendments. Even woman's suffrage stirred us to some violence of thought and deed. At least five Southern states are preparing, if segregation is abolished, to make educational Saharas of their states by destroying their public school systems. That this will not work and that eventually the same states later will restore their school systems, is ignored in the passions of the moment. If the court does follow its baseball rule it will transfer the passions to Congress, to filibusters and debate.

Southern Educator Predicts U. S. Supreme Court To Nix JC Schools

Gainesville, Fla. (ANP).—A Southern educator told the Southern Political Science Assn. meeting here last week that the U. S. Supreme Court will rule racial segregation in public school education unconstitutional. He added, however, that the high court will word its decision in a manner to provide for a 10 to 20 year gradual shift in the areas now practicing segregation.

Dr. Ernest R. Bartley, a professor of the host University of Florida, made the prediction, declaring that "I believe the court is ready to meet the segregation question head on."

He said that as far as graduate and professional schools are concerned, racial segregation "is dead." It is not a matter of "policy" he said, but one of "legality."

Another member of the panel, Dr. Robert J. Harris of Louisiana State university, criticized the separate equal facilities contention, saying that once the high court looks beyond this fiction, the argument cannot stand because "disparities between the facts of higher education for the two races in the South are so great that even the most obtuse must recognize them."

Others taking part in the panel discussion were Dr. Charlotte Williams of Vanderbilt college and R. David G. Monroe of the University of North Carolina. Dr. Thomas I. Cook of Johns Hopkins university acted as moderator.

Allen Blasts GOP Stand On Segregation, Says South Can Handle Her Own Problems

ATLANTA, Dec. 1 (AP)— Alabama's Lt. Gov. James B. Allen asserted today the South "will not support an edice from Washington contrary to our customs, our heritage and our traditions" on the segregation issue.

He lashed out at federal government "encroachments" on states' rights and assured the Georgia Senate Southern states could iron out their own racial and educational problems if given time.

Allen led a group of 19 Alabama legislators in returning a visit which Lt. Gov. Marvin Griffin of Georgia made to Montgomery earlier this year.

Brownell Gets Credit

The Alabama leader credited action of Atty. Gen. Herbert Brownell with making "the Solid South—solidly Democratic" once again. He said Brownell's request to the U. S. Supreme Court "to strike down segregation" came "after a number of consultations with the President himself."

Calling on the senators to shoulder their responsibilities ithout hesitation, Allen declared that every time a state government says "let the federal government do it," another of its rights is abandoned.

Allen specifically advocated a return to the states of some "fields of taxation," saying if the cigarette tax were turned over to the states Alabama could increase its state income by between 20 and 25 million dollars a year.

The speaker, mentioned as a possible candidate for governor of Alabama, outlined in 11 steps the elements which constitute a strong, responsible state government, stressing "leadership that is expressive of the thinking and of the ideals and aspirations of the people."

He called on state governments to announce their determination to preserve their rights as states, discharge their obligations as states, seek federal government cooperation in the fields of taxation, and furnish citizens with strong, responsible governments.

Accompanying Allen on the visit were:

Sens. Amos Jones of Florence, Sam High of Ashville, Joe Foster of Huntsville, Graham Wright of Talladega, Albert Boutwell of Birmingham, Ross Hollis of Sulligent, John L. Whatley of Opelika, Virgil Smith of Leesburg.

Reps. Roberts Brown of Opelika, J. W. Springer Sr., of Union Springs, J. B. Burkhalter of Center, John C. Weathers of Randolph County, Roy McClendon of Chambers county, Kenneth Holman of Ozark, James A. Branyon II of Fayette, George Hawkins of Gadsden, D. W. Ward of Opelika and J. H. Pirkle of Heflin.

Speaks to Georgia legislators—

Allen wants state approach to segregation problems

ATLANTA, Dec. 1 — (AP) — Lt. Gov. James B. Allen of Alabama today asked "what has become of the States' Rights approach" toward segregation in the South?

Speaking before the Georgia Senate, Allen answered the question by saying the Republicans were like a number of politicians who put votes ahead of principle."

The Alabama lieutenant governor and a group of about 25 Alabama legislators were returning a visit which Lt. Gov. Marvin Griffin of Georgia made to Montgomery earlier in the year.

ALLEN SAID Atty. Gen. Herbert Brownell "after a number of consultations with the president himself now asked the Supreme Court to strike down segregation in the South."

This action, Allen said, will make the South known once again as "the Solid South—solidly Democratic."

"Given time, we in the South will equalize educational opportunities for all our people," Allen said, "but we will not support an edict from Washingtin contrary to our customs, our heritage and our traditions."

THE ALABAMA legislator decried the loss of rights of states through federal encroachment. "Haven't we heard all too often the cry 'Let the government do it,' meaning, of course, the federal government.

"Every time we as state governments say this we fail to discharge properly our state's obligations—we abandon another of our rights as states."

Advocating a return to the states of some "fields of taxation," Allen said the state could further discharge its own obligations. He mentioned specifically the cigaret tax, and said if it were turned over to Alabama it would mean a $20 to $25 million increase in the state's ncome.

In openng laudatory remarks Allen said he cast the first vote at the Democratic convention for Sen. Richard B. Russell of Georgia. "Adlai Stevenson may be the best quipster," Allen said, "but Russell is the greatest statesman." The Georgia senators gave him an ovation at this.

Briefs Filed

Top Court Set for Big Cases

By STANLEY ROBERTS

WASHINGTON — Briefs in the five big school segregation cases were filed this week in the U. S. Supreme Court, ready for study and analysis by the Justices prior to the hearings of the cases set to begin Monday, Dec. 7.

Although the briefs were filed Monday, the cases will be heard beginning Dec. 7. These will be the five cases challenging the constitutionality of separate schools for Negro and whites in seventeen states and the District of Columbia.

TWO HUNDRED and fifty newspaper and radio reporters, as well as 100 editors and columnists have applied for space in the limited Supreme Court press section . . . and distinguished lawyers, jurists and legal authorities the nation over will attempt to secure seats traditionally reserved for members of the Supreme Court Bar. Thousands of tourists as well as citizens with business to do with the Government are planning their journeys here to coincide with the days of the arguments.

However, as on the days of segregation cases debates in the past, most of them will be disappointed and unable to enter the magnificent courtroom's visitors' section because unless there is most urgent business or an emergency elsewhere, one very seldom observes a person leaving these vital and far-reaching chambers.

The five cases will consume ten hours of debate before the nine justices . . . covering a period of three days, Monday, Tuesday and Wednesday (and possibly part of Thursday), Dec. 7, 8 and 9.

Each side will be allowed . . . to the minute . . . one hour's presentation on each case.

PERSONALITIES, no less than the historic issues involved, are creating drama here as we await Dec. 7. Thurgood Marshall, NAACP legal counsel and generally recognized leader of the ever-expanding group of expert Negro civil rights lawyers, always causes an air of excitement when he appears before the Supreme Court. He will argue the South Carolina case. The learned justices very seldom interrupt (and to my knowledge have never heckled or harassed Marshall) as is their right during debates . . . a right they are prone to take and which continuously discourages and distracts some of America's finest barristers. In fact, the justices usually sit back and allow Mr. Marshall to proceed in his logical citations and arguments with seeming relaxed enjoyment and admiration.

Mr. Marshall and his NAACP associates will argue the cases brought by the NAACP against South Carolina, Virginia, Delaware and Kansas.

The fifth, by a Negro organization of mothers and fathers known as the Consolidated Parents Group, against the District of Columbia, will be presented by Atty. George E. C. Hayes, of the Cobb, Howard and Hayes law firm here, and James E. Nabrit of the Howard University Law School. Hayes and Nabrit are also NAACP lawyers who have assisted in directing the tremendous preparations involved in the cases.

Atty. Robert Carter will present the Kansas case . . . Jack Greenberg and Louis Redding, Delaware . . . Spottswood Robinson, Virginia.

Other lawyers who have been in close consultation in behalf of the educational equality included Howard Law School dean, George Johnson, and Frank Reeves, Washington, D. C. . . . Robert Ming, Chicago . . . William Coleman, Philadelphia . . . Oliver Hill, Richmond . . . Elwood Chisholm and Charles Duncan.

Great credit should go to research and writing and studies made by every member of Howard Law School's faculty and student body. We here in Washington have observed their tremendous unselfish dedication to the "EE" Day cause. So much for the behind-the-scenes preparations for the big event.

Evasion Is Not The Answer

Before the filing of the much talked of Brownell Brief, which hits at the foundation of segregation in the schools, some public officials of the state were advocating a course of evasion if segregation is ruled out. The governor himself delivered an address before the Association of Peace officers, declaring a firm stand on the opposite side if and when the courts handed down a decision on the question contrary to his views. The talk did not stop here; that matter reached a number one place on the agenda of the General Assembly and a commission was appointed to find a plan to preserve separation of the races in the public schools.

Let us for the sake of the record and sane logic admit that it was perfectly reasonable in the line of our customs dealing with vital issues, to appoint a commission. But it seems this commission is told in advance what to find. An open-minded commission will be helpful but a closed-mind commission will not be helpful.

In other words, a fact-finding commission has been appointed and given at the outset the "facts" to find. This is as illogical as the South Carolina Primary case, in all its glaring antagonisms, which needlessly stirred up and disturbed the peace of the people.

The Brownell Brief, dealt within the confines of the 14th Amendment, which despite some of the ambigious allegations of some contemporaries that the 14th was coercive. This is as logical as for any person who considered a portion of the Constitution against his interests, to also take the position that it too is coercive. Be that as it may, the 14th is just as effective as any portion of the great document including the declarations and provisions of a Democracy meant for "justice and liberty for all."

Surely President Eisenhower would not relish the reference made in some quarters, to disassociate him from the Brownell move. Every citizen in the land should be acquainted with the campaign (1952) pronouncements of the president in his firm stand taken against second-class citizenship. He carried this challenge all over the country in his campaign and among the first directives given after he took office was to end segregation in the restaurants and theatres in the nation's capital.

To refer to the courts as being "political" and the timing of its setting of the re-argument—"political" are just as untenable as the attempt to absolve President Eisenhower from the responsibility of the act of his Attorney General. On the other hand, we are not quite sure that a people who have long reverenced the whole of the Constitution, would declare that such an accusation was clear from the province of an aspersion cast at the Constitution of the United States of America.

The Constitution is a living document; meant to safeguard the rights of all the people, not a static instrument. It was founded upon the principles of unity and justice and has long been so honored as the cradle-bed of liberty all over the world.

We here and now rededicate our unstinted loyalty and devout devotion to the Constitution and our eternal faith in its wisdom and integrity.

Yes, appoint a commission of fact finding, but don't tell them what "facts" to find.

The commission can serve a good purpose if it will approach the question of the public school issue objectively with a view of finding a practical way to meet in spirit and fact the school issue in the light of the decision of the court. Evasion is not the answer!

GOP Hope Of Dixie 'Snuffed Out' By Brownell Brief On Schools, Democrat Bigwigs Declare

WASHINGTON, Nov. 28 (UP)—Dixie Democratic leaders said today the administration's Supreme Court brief on public school segregation snuffed out Republican chances for getting a political foothold in the "Solid South."

Many of them cited what they called political implications in the brief Atty. Gen. Herbert Brownell Jr. filed with the high court Friday.

One highly placed Southern senator said Brownell's brief will add to the hurts already done the Republicans in the South by the administration campaign to eliminate segregation in Army camps and shipyards and other "similar moves."

Most practicing Democrats in the Deep South have maintained that a two-party Dixie is nothing but a gleam in Republican eyes and they felt certain now their appraisal was correct.

Sen. Olin D. Johnston (D-SC) said the Brownell brief would make little difference in his state and Republicans "might as well bark up another tree" if they expect to get a foothold there.

GOP Wins 4 States

"Most of the people who voted for Mr. Eisenhower in South Carolina last year still call themselves Democrats and they'll fight if you call them Republicans," Johnston said.

Eisenhower carried four Southern states—Virginia, Texas, Tennessee and Florida—and was surprisingly strong in several others in 1952. The GOP, some of its leaders said, would be a vital force in Dixie politics hereafter.

New violent criticism came now, however, from Southerners who for the most part also were loudest in denouncing former President Truman for his espousal of federal civil rights legislation.

Gov. Herman Talmadge of Georgia, who has threatened to junk public schools and set up a private system if the Supreme Court outlaws segregation, called the Brownell brief "a stab in the back" by "leftwing elements."

Gov. Hugh White of Mississippi said Brownell "stretched the Constitution" in his argument, which was "a disappointment" to Southerners who supported the GOP ticket last year.

Governors Silent

Talmadge and White did not bolt their party last year, but three other Southern Democratic governors who did—Allan Shivers of Texas, James F. Byrnes of South Carolina and Rogbert F. Kennon of Louisiana—declined to comment on the government argument against segregation.

Lt. Gov. James B. Allen of Alabama said, however, "many people believed Eisenhower was going to be in favor of handling segregation on a state basis and they will be disillusioned."

Rep. John Bell Williams (D-Miss) blasted both the Eisenhower and Truman administrations. "The Eisenhower administration has elected to tweedle-dum to Truman's tweedle-dee," he said. "It is shameful and disgraceful .... to play politics with the highest court in the land."

Frank Twitty, floor leader of the Georgia House, singled out Brownell for a similar dose of criticism.

Twitty Comments

"It is the exact thing you would expect from a man like Brownell," Twitty said. "Reckless, blind hatred of the South and a wholly political approach to a grave national problem."

Rep. E. C. Gathings (D-Ark) called Brownell's brief an attempt to circumvent the will of Congress. He said Congress "consistently" refused to pass anti-segregation laws and called for a new law to keep the Supreme Court from passing on the school cases.

The hotly disputed brief was Brownell's answer to the court's questions on his views in five separate school cases now pending. Negroes argue that segregation in itself is inequality and, therefore, unconstitutional—even where "separate but equal" facilities are afforded.

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EDUCATION

Supreme Court Weighs Segregation Decision

By LUTHER A. HUSTON
New York Times News Service. Special to The Atlanta Constitution

WASHINGTON, Dec. 9—Arguments ended in the Supreme Court today on the issue of the constitutionality of racial segregation in the public schools and the nine justices took the momentous question under advisement.

The justices must decide whether the doors of white schools shall be thrown open to Negro pupils in 17 states and the District of Columbia, where segregation is mandatory. Several other states, notably Kansas, where complete or partial segregation prevails under permissive statutes, also will be affected by the high court's ruling.

The court heard more than 10 hours of argument when the hearing closed at 2:42 this afternoon. Although the discussions touched upon innumerable phases of the problem, some observers who have witnessed many historic constitutional battles before the high court doubted that all the perplexities of the justices had been dispelled.

Those remaining will have to be resolved in judicial conferences and in the study the members of the court will give to the voluminous written records in the five cases awaiting decision.

The consensus among those familiar with the processes of the court was that several months would elapse before a ruling is handed down.

The five cases came from South Carolina, Virginia, Delaware, Kansas and the District of Columbia. Those from the four states were brought under the 14th Amendment, which forbids any state to make or enforce laws that infringe upon the rights or privileges of any citizen of the United States.

The District of Columbia case involves the provision of the Fifth Amendment that protects citizens from deprivation of life, liberty or property without due process of law.

The basic issue in all the cases, however, was whether the states and the District have the constitutional power to require white and Negro pupils in elementary and secondary categories to attend separate public schools.

A corollary question, argued at length, was whether the Supreme Court should now set aside a doctrine, laid down by another court, nearly 60 years ago: that segregation is not unconstitutional if equal facilities are provided for each race.

LEGAL GUNS

Heading the legal battery that pleaded the cause of the states was John W. Davis of New York, who was the Democratic nominee for president in 1924. Davis is 80 and has won many victories in constitutional cases before the Supreme Court.

Thurgood Marshall, 35 years younger than Davis, was his principal opponent. Marshall, of New York, is special counsel for the National Association for the Advancement of the Colored People.

Throughout all the arguments the attorneys for the Negroes contended that segregation was unconstitutional on any grounds or in any circumstances. They asserted that one purpose of the 14th Amendment was to abolish segregation in the public schools and "wipe out the last vestige of slavery."

Davis and those who spoke on his side declared that it was not the intent of the 39th Congress in passing the 14th Amendment in 1866 and submitting it to the states, that it then, or at any future time, would outlaw school segregation.

They maintained that the state laws that segregated Negro and white children in separate schools did not contravene the Constitution.

Lawyers for the Negroes asserted that the doctrine of "separate but equal" facilities laid down in the case of Plessy v. Ferguson in 1897 had been used since that time to perpetuate unconstitutional practices and should now be set aside. Attorneys for the states maintained that this was sound doctrine that did not deprive Negroes of any constitutional rights, that it had standing as a legal code upon which many states had based their public school systems and that the Supreme Court lacked judicial power to invalidate it.

The federal government, through the Department of Justice, sided with the Negroes. As a "friend of the court" it argued that school segregation based on race or color was unconstitutional under the 14th Amendment. The government also joined the Negro attorneys in telling the Supreme Court that it had ample power and a firm obligation to decide the segregation unconstitutional.

The South Carolina, Virginia and Kansas cases were argued Monday and Tuesday. The District of Columbia and Delaware cases were argued today.

PUBLIC SCHOOLS

Administration Urges High Court To Outlaw Segregation in Schools

By LUTHER A. HUSTON
Special to The New York Times.

WASHINGTON, Dec. 8—The Eisenhower Administration told the Supreme Court today that segregation of races in separate public schools could not be maintained under the Fourteenth Amendment to the Constitution.

This amendment forbids any state to make or enforce any law that abridges the rights of citizens of the United States. J. Lee Rankin, Assistant Attorney General, asserted that it was clear that the constitutional rights of Negro citizens had been abridged by state school segregation laws, and that the high court should so decide.

"It is the position of the Department of Justice," he said, "that the Fourteenth Amendment does not permit any discrimination based on race or color."

Mr. Rankin was discussing, in the second day of arguments in the Supreme Court on the segregation cases, the question of the court's power to declare unconstitutional the education of white and Negro children in separate public schools. The Department of Justice said, in a brief filed last week, that the court had ample power to strike down segregation.

Justice William O. Douglas asked whether it was "the position of the Justice Department that the court could decide the question either way?"

"No," Mr. Rankin replied, "the court can find only one answer * * *. When they [the defendants] stand before this court and say that the only reason for segregation is color, the court must say that the Fourteenth Amendment does not permit this to happen."

Speaking as the representative of Herbert Brownell Jr., the Attorney General, Mr. Rankin said that the Justice Department had accepted the position taken by James P. McGranery, Mr. Brownell's predecessor.

Mr. McGranery, in a brief filed last year, told the Supreme Court that the Truman Administration was convinced that separate schools for white and Negro pupils were illegal, and that the court had no basis for ruling otherwise.

Contrary opinions were expressed by other lawyers, however, during a lively day in court.

J. Lindsay Almond Jr., Attorney General of Virginia, asserted that the opponents of segregation were asking the Supreme Court to amend the Constitution.

School segregation, he declared, was a fair exercise of the powers of the states that had approved the Fourteenth Amendment with the understanding that it did not prohibit a segregated system of public education.

"Separate but equal facilities do not offend any provision of the Constitution of the United States," Mr. Almond said.

Paul E. Wilson, Assistant Attorney General of Kansas, also said that his state did not ratify the Fourteenth Amendment on the understanding that it would outlaw segregation. He defended as constitutional a Kansas law permitting segregation by local option.

The Fourteenth Amendment was proposed by the Thirty-ninth Congress by the state legislatures on June 16, 1866. It was declared to have been ratified on July 28, 1868.

Four cases before the Supreme Court deal with the school segregation laws of Kansas, South Carolina, Virginia and Delware. They have been assailed as unconstitutional under the Fourteenth Amendment by lawyers representing parents of Negro children barred from attending white schools in those states.

In a fifth case, the District of Columbia's laws prohibiting Negroes from attending white schools have been attacked as unconstitutional under the Fifth Amendment.

This amendment provides that no person shall be deprived of life, liberty or property without due process of law. The attack on the district's laws was made under the Fifth Amendment because the Fourteenth Amendment applies to the powers of the States, whereas Congress legislates for the district.

Fourteen other states have compulsory school segregation laws and will be affected by the Supreme Court's decision.

Questions Raised by Court

The cases were argued at the last term of the court, but not decided. Reargruments began yesterday, dealing chiefly with specific questions posed by the court as to whether Congress intended the Fourteenth Amendment to outlaw segregation and whether the states understood, in ratifying it, that it might be construed, then or in the future, as outlawing segregation.

Opening the arguments yesterday, Thurgood Marshall of New York and Spottswood W. Robinson 3d of Richmond, Va., lawyers for the Negro groups supporting the attack on the segregation laws, told the court that segregation was unconstitutional per se.

The Fourteenth Amendment, they asserted, was passed by Congress and ratified by the states to wipe out the last vestige of slavery and give the Negro complete equality. The Supreme Court, they argued, had the power and the duty to outlaw school segregation.

The doctrine that segregation was constitutional if separate but equal facilities were provided for the different races, laid down in a decision by the Supreme Court nearly sixty years ago in the case of Plessy vs. Ferguson, should be discarded by the present court, the two lawyers asserted.

Even if the facilities provided for Negro children were better than those supplied for white pupils, Mr. Marshall said, segregation still would be unconstitutional.

Court's Power Doubted

Arguing for South Carolina, John W. Davis, Democratic nominee for President in 1924, asserted that there could be no question that Congress did not intend the Fourteenth Amendment to abolish school segregation. Segregration, he declared, did not deprive Negroes of equal protection within the meaning of the amendment.

Mr. Davis, who is 80 years old

and a veteran of many constitutional battles in the high court, told the nine justices that it was not within their "judicial power" to set aside on a sociological basis a system that the states and the lower courts had considered legal for three-quarters of a century.

The happiness, progress and welfare of Negro children, he said, was "best promoted in segregated schools."

Arguments in the South Carolina and Virginia cases were completed soon after the court convened today.

In his final presentation to the court, Mr. Marshall said that the question to be decided was whether the wishes of the states or the Constitution of the United States should prevail.

The duty of enforcing the Fourteenth Amendment, he added, rested on the high court, and its decision would be vital to the states, to this country and to the world.

The Department of Justice intervened as a "friend of the court," and Mr. Rankin appeared as its spokesman. He said that all the department wanted was to help the court reach a proper decision.

Justice Felix Frankfurter asked Mr. Rankin how he interpreted the fact that Congress had passed laws to set up segregated schools in the District of Columbia and since 1871 had appropriated funds to maintain them.

Mr. Rankin said he did not interpret this as establishing that Congress did not intend the Fourteenth Amendment to abolish segregation. Nothing in the history of all the legislation passed by Congress relating to segregation questions, he added, broke down the clear intent of the national legislature that the amendment would end discrimination against the Negro in all of its forms.

"You think then," Justice Frankfurter said, "that legislation by Congress is like the British Empire, something that is acquired in a fit of absent-mindedness."

Justice Robert H. Jackson, raising the question of the understanding of the states, asked Mr. Rankin how he would account for decisions by New York state courts, among others, holding, after ratification of the Fourteenth Amendment, that it did not invalidate state school segregation laws.

Mr. Rankin expressed the opinion that such decisions were based on an erroneous interpretation of earlier rulings of the Supreme Court and of its decision in Plessy vs. Ferguson.

Mr. Rankin, after asserting that it was the duty of the court to hold segregation unconstitutional, said that the other problem for the court to decide was the question of relief. He added that the Justice Department did not regard lightly suggestions that an indefinite time be allowed the states to integrate their public schools.

He declared, however, that the cases should be sent back to the lower courts to decide just how, in the light of local conditions, the decree of the Supreme Court should be enforced.

'Generation Of Litigation'

Our horseback guess is that the U.S. Supreme Court will, at the very least, direct some kind of reordering of the school segregation pattern. At the worst, it will direct a prompt abolition of segregation.

But if either happens, the resultant changes will not come at a bound. Rome was neither built nor destroyed in a day. Something of the kind plainly seems to be in the mind of Justice Robert Jackson, for at one point in the arguments this week he said:

"I foresee a generation of litigation."

So do many other people. Any court ruling against segregation could conceivably be resisted county by county as a delaying action that might span years.

Justice Jackson eyed this possibility in pointing out from the bench that the anti-segregation suits were not directed against whole states, but merely local school districts. Southern guerrillas of a resistance movement might thus resist in court county by county for years. The "law's delay" is a pregnant phrase.

What About Segregation?

(From The Anniston (Ala.) Star)

Whatever decision the U. S. Supreme Court reaches after hearing oral argument starting next Monday in five cases involving racial segregation in public schools, matters won't be helped any by adopting an attitude such as has been taken by Roy C. Harris, Georgia political power and Talmadge supporter.

In a recent issue of his weekly newspaper published in Augusta, he lashed out at the liberal view with respect to segregation that had been expressed in an editorial written by student editors for The **Red and Black**, University of Georgia student publication.

Describing the students involved as "a handful of sissy, misguided squirts," Mr. Harris revealed a sad lack of discriminating taste when he declared that "everytime I see one of these little sissy boys hanging around some college, the more I think every one of them ought to be made to play football."

His philippic went on to say:

"But the time has come to clean out all of these institutions all Communist influences and the crazy idea of mixing and mingling of the races which was sponsored in this country by the Communist Party."

It also was argued that if the State of Georgia is willing to pay "a big price to educate its college students," it has the right to control "what is taught and what is done at the University."

The trouble with this sort of approach is that it substitutes emotion for fundamentals. It proceeds on the assumption that the South's institution of segregation, whose worth has been proved, now is being threatened by Communists, when the fact is that a complex point of constitutional law is being argued.

Opponents of segregation in South Carolina, Virginia, Kansas and Delaware have invoked the Fourteenth Amendment to the Federal Constitution, which provides that "no state shall make or enforce any law that shall abridge the privileges or immunities of citizens of the United States."

The District of Columbia case differs from the four others in that it was brought under the Fifth Amendment, a part of the Bill of Rights, on the ground that segregation results in a deprivation of "life, liberty and property without due process of law."

Also at stake, although indirectly, are laws of 16 other states, 13 of them, including Alabama, in which segregation is required, and three others in which it is permitted.

There is, of course, no way of knowing at this time what the decision in the five test cases will be. It well might uphold the "separate but equal" doctrine laid down in 1896 in the case of **Plessy versus Ferguson**, the Court's reasoning being that if further action is needed to serve the ends of fairness and justice, the legislative branch of the Federal Government has the responsibility of enacting appropriate legislation.

Or the Court might concur in the basic argument of the inflammatory brief filed last week by Attorney General Brownell, who held that the Fourteenth Amendment compels "a state to grant the benefits of education to all its people equally, without regard to differences of race or color."

At all events, the great need will be for members of both races to continue to show the good will and forbearance that have made possible a gradual and an orderly lowering of segregation barriers in recent years. Segregation, it might as well be admitted by everyone, is destined to be discarded eventually in our democracy, if that is the political system under which we wish to live.

But the authority of local officials to define school districts means that here in the South public school education will be, for the most part, on a segregated basis for some time to come, regardless of what the Supreme Court decides. And no member of either race ever will be required to meet socially with persons other than those of his own choosing.

Why, then, should a politician over in Georgia be so incensed at the liberal, factual way in which some young people have viewed the segregation issue?

Robinson Opens School Argument

Thurgood follows Virginian; merge Va.-S.C. cases

South fears new Chief Justice Warren, California liberal, to tip scales against JC schools

WASHINGTON

The historic reargument of the five school segregation cases before the Supreme Court was opened early Monday afternoon by Spottswood W. Robinson, attorney for the appellants (plaintiffs) in the Virginia case.

Mr. Robinson was followed by Thurgood Marshall of New York, NAACP special counsel. The NAACP is sponsoring the Virginia, South Carolina, Kansas and Delaware cases attacking the constitutionality of the laws of those states requiring racial segregation in public schools.

After the routine business of the court was finished—the reading of opinions, issuance of orders and admission of lawyers—Chief Justice Earl Warren called the first of the five cases.

For purposes of argument, the South Carolina and Virginia cases were consolidated.

Pitted against each other in the argument of the South Carolina case were John W. Davis of NYC, one of the great constitutional lawyers of the country and 1924 Democratic candidate for President, and Thurgood Marshall, NAACP special counsel.

Marshall A Specialist

Mr. Davis was brought into the South Carolina case by Gov. James F. Byrnes, who has vowed to turn over his state's public schools to private organizations and individuals if the Supreme Court should outlaw racial segregation.

Mr. Marshall has specialized in civil rights cases and has a long string of victories in the Supreme Court to his credit.

Not only did he argue the South Carolina case in behalf of the colored pupils and their parents in Clarendon county, who are seeking to break down segregation in the public schools of their state, but is chief counsel in the Virginia, Kansas and Delaware cases as well.

Chief Justice Warren is sitting for the first time in a civil rights case since President Eisenhower appointed him to succeed the late Chief Justice Fred M. Vinson.

Southerners Fear Warren

The attorneys general of southern states believe that the chances of the court's declaring unconstitutional laws requiring racial segregation in public schools were enhanced by Justice Warren's appointment.

The Virginia case is being argued on behalf of colored pupils and their parents by Spottswood W. Robinson 3rd of Richmond. T. Justin Moore, also of Richmond, and J. Lindsay Almond Jr., attorney general of Virginia, are arguing the case for the school board of Prince Edward county and the state.

In all, the court will hear 11 hours of argument unless some of the lawyers do not use all the time allotted to them. The court has allowed two hours of argument in each case, one hour to a side. In addition, the Federal Government was given an hour for argument.

Rankin To Argue For U.S.

Assistant Attorney General J. Lee Rankin will present the Government's view that the court has the judicial power to construe the 14th Amendment as abolishing segregation in public schools, without any implementing legislation by the Congress.

Mr. Rankin's argument follows that of the Virginia and South Carolina cases. Attorneys representing the states in those two cases are expected to reserve some of their time for rebuttal of Mr. Rankin's argument.

Inasmuch as Mr. Marshall opened the argument in the South Carolina case, he may be allowed to close the argument in the consolidated Virginia-South Carolina cases.

The cases to follow are those from the District of Columbia, Kansas and Delaware.

First Argued Last Year

These five cases were originally argued last Dec 9, 10 and 11, but the court on June 8 ordered them assigned for reargument on Oct. 12 and requested the attorneys to discuss certain specific questions in their briefs and oral arguments.

The court, at the same time, invited Attorney General Herbert Brownell Jr., to file an additional brief on behalf of the United States and to take part in the oral argument. Mr. Brownell immediately announced that he would welcome the opportunity to do so.

The Justice Department had previously filed a joint brief in the five cases.

2 Questions Affect D. C.

At the request of Mr. Brownell, acquiesced in by the attorneys, the court last Aug. 4 postponed reargument of the cases to Dec 7.

Only two of the questions which the court asked the

lawyers to discuss relate to the District of Columbia. The District case differs from the state cases in that it was brought under the Fifth Amendment, which prohibits the Federal Government from depriving any person of "life, liberty or property without due process of law."

The state cases were brought under the 14th Amendment, which prohibits any state from depriving any person of life, liberty or property without due process of law, or denying to any person the equal protection of the laws.

The questions, which the court asked, and the answers follow:

1. What evidence is there that the Congress which submitted and the state legislatures which ratified the 14th Amendment contemplated or understood that it would abolish segregation in public schools?

Attorney General Brownell: While the legislative history does not conclusively establish that the Congress which proposed the 14th Amendment specifically understood that it would abolish segregation in the public schools, there is ample evidence that it understood that the amendment established broad constitutional principles of full and complete equality of all persons under the law, and that it forbade all legal distinctions based on race or color.

Brownell, NAACP Agree

The NAACP: There is ample evidence that the Congress which submitted and the states which ratified the 14th Amendment contemplated and understood that it would deprive the states of the power to impose any racial distinctions in determining when, where and how its citizens would enjoy various civil rights afforded by the states.

The right to public education was one of the civil rights with respect to which the states were deprived of the power to impose racial distinctions.

While the framers of the amendment clearly intended that Congress should have the power to enforce its provisions, they also intended that the amendment would be prohibitory on the states without congressional action.

Virginia Says No

Virginia: There is substantial evidence that the Congress which submitted the 14th Amendment contemplated and understood that it would not abolish segregation in the public schools.

There were 37 states in the Union at the time the amendment was ratified. There is affirmative evidence from 23 of them that it was understood that the amendment would not abolish school segregation. In 14 of the states no evidence is available.

In not one of the states did Virginia attorneys find "substantial affirmative evidence" that it was contemplated or understood that ratification of the amendment meant that segregation in the public schools was abolished.

South Carolina Speaks

South Carolina: The overwhelming preponderance of the evidence demonstrates that the Congress which submitted and the state legislatures which ratified the 14th Amendment neither contemplated nor understood that it would abolish segregation in the public schools.

Kansas: The evidence is persuasive that the majority of the members of the 39th Congress neither contemplated nor understood that the 14th Amendment would abolish segregation in the public schools.

Delaware: The Congress which submitted the 14th Amendment and the great majority of states which ratified it understood that segregation in public schools would not be, by force of the amendment, abolished.

Court's Question No. 2

2. If neither the Congress in submitting nor the states in ratifying the 14th Amendment understood that it would abolish segregation in public schools, was it the understanding of its framers that

(a) that future Congresses might, in the exercise of their power to enforce the provisions of the amendment, abolish such segregation, or (b) that it would be within the judicial power, in light of future conditions, to construe the amendment as abolishing such segregation of its own force?

Attorney General Brownell: There is no direct evidence at the time the amendment was adopted that its framers understood specifically that future Congresses, in the exercise of their power to enforce the amendment, might abolish segregation in public schools.

What They Did Understand

But they clearly understood that Congress would have the power to enforce the broad guarantees of the amendment, and the amendment was deliberately framed so as to assure that the rights protected by it could not be withdrawn or restricted by future Congresses.

No specific references have been found in the debates on the 14th Amendment to show any expressed understanding of the framers as to the judicial power, in light of future conditions, to construe the amendment as abolishing segregation of its own force.

But some evidence of such an understanding is found in the debates on the Civil Rights Acts.

NAACP Supplies Data

NAACP: Throughout the debates in the 39th and later Congresses, the framers of the amendment, the Radical Republican majority in Congress over and over again, made it clear that:

(1) future Congresses might take whatever action they deemed necessary to enforce the amendment; (2) one of its purposes was to take away from future Congresses the power to diminish the rights intended to be protected by the amendment, and

(3) it at all times made it clear that the amendment was intended to be self-executing, and that the judiciary would have the authority to enforce its provisions without further legislation by Congress.

Virginia Not Too Sure

Virginia: There is no indication that the Congress that proposed the amendment understood that future Congresses might act to abolish school segregation. In later Congresses there were many who thought that Congress had this power, but they were never enough to pass a law outlawing school segregation.

Virginia answered in the negative also the question of whether it was within the judicial power, in light of future conditions, to construe the amendment as abolishing school segregation.

South Carolina: It was not the understanding of the framers of the amendment that future Congresses might, in the exercise of their power to enforce its provisions, abolish segregation in public schools, nor did its framers intend it to be within the judicial power, in light of future conditions, to construe the amendment as abolishing such segregation of its own force.

Delaware, Kansas Agree

Kansas: The evidence sustains the position that neither the Congress nor the states understood that the 14th Amendment would empower the Congress, under its authority to enforcement of the provisions of the amendment provisions of the amendment, or the judiciary, in the light of future conditions, to abolish school segregation.

Delaware: Answered the question to the same effect.

3. If the evidence submitted does not dispose of Questions 1 and 2, is abolition of segregation in public schools within the judicial power, in construing the amendment?

Attorney General Brownell: It is within the judicial power, in construing the amendment, to decide that race segregation in public schools is unconstitutional.

NAACP: Whatever the evidence concerning question 2 may disclose, it is within the judicial power to hold that segregated schools violate the 14th Amendment.

Has Power, But—Virginia

Virginia: Certainly judicial power exists if the only question be whether the court is empowered to make an enforceable decision.

But to interpret the 14th Amendment as authority for the judicial abolition of school segregation would be an invasion of the legislative power and an exact reversal of the intent of the framers of the amendment.

It would reverse unquestioned precedents in decisions of the Supreme Court that have withstood the test of time without impairment.

It also would overturn the established meaning of the amendment that the court should sustain state legislative action which is reasonable on the particular facts.

In these circumstances, abolition of school segregation is not within the judicial power.

South Carolina: It is not within the judicial power to construe the Fourteenth Amendment adversely to the understanding of its framers as abolishing segregation.

South Carolina: It is not within the judicial power to construe the Fourteenth Amendment adversely to the understanding of its framers as abolishing segregation in public schools.

If the principle of stare decisis (stand by decided matters) is applied, controlling precedents preclude a construction which would abolish school segregation.

Even if the principle of stare decisis and the controlling precedents be abandoned and the effect of the amendment upon public school segregation be examined anew, under established standards of equal protection, the amendment may not be construed to abolish segregation as a matter of law in all cases.

Stands On Local Conditions

Rather, each case of such segregation must be decided upon the facts in the record, and unless the record establishes by clear and convincing evidence that such segregation could not conceivably be warranted by local conditions, the 14th Amendment may not be construed to abolish segregation in that case.

Kansas: To abolish segregation in public schools is not within the judicial power. The judicial power can be applied to factual situations existing at the time the amendment was adopted only to the extent and in the manner that its framers contemulated.

Delaware: The court is without judicial power to construe the amendment to abolish school segregation.

Court's Question No. 4

4. If it is decided that public school segregation violates the 14th Amendment, (a) would a decree necessarily follow that colored children must be admitted immediately to whatever public school they choose within their own districts, or (b) could the court exercise its equity powers to effect the change gradually?

Attorney General Brownell: The court has undoubted power to enter such decrees as it determines will be most effective and just in relation to the interests, private and public, affected by its decisions.

NAACP: The 14th Amendment requires that a decree be entered directing that the children involved in these cases be admitted "forthwith" to public schools without racial distinction. There is no equitable justification for delaying their enjoyment of their rights.

Virginia: The court may permit an effective gradual adjustment. Precipitate action would make education impossible and do irreparable harm to all children in the schools.

"Not 'Forthwith,' " S. C. Says

South Carolina: A decree would not necessarily follow providing that within the limits of normal geographical school districting colored children should "forthwith" be ordered admitted to schools of their choice.

The court may permit an effective gradual adjustment to be brought about from existing segregated to unsegregated public school systems.

Kansas: The Topeka Board of Education, in a brief separate from the one filed by the state, favored a gradual change, which it is in the process of making in the elementary schools of Topeka (Grades 1 through six).

Delaware; The court should permit a gradual adjustment to be brought about from the existing segregated to unsegregated systems.

"Go Ahead." Says D.C.

District of Columbia: The petitioners asked the court to declare the action of the board of education in requiring segregation in the public schools to be unlawful;

Direct that such sch[illegible] be discontinued "forthwith" and that the minor petitioners be admitted to Sousa junior high school, without racial distinction, as soon as necessary administrative adjustments can be made and not later than the beginning of the next school year.

There is no necessity for a "gradual" decree in the District of Columbia.

Corporation counsel of the District of Columbia: If segregated schools are declared unconstitutional, immediate changeover from the dual to a single colored system does not necessarily follow. The court should permit a gradual adjustment to be made.

Court's Question No. 5

5. Assuming that the court

would exercise its equity powers, should it formulate detailed decrees and, if so, on what issues, or should the court appoint a special master to hear evidence and recommend specific terms, or should the cases be sent back to the lower courts with instructions to frame the decrees and, if so, on what directions and procedures?

Attorney General Brownell: If the court outlaws segregation, it should enter decrees providing:

1. That race segregation in public schools is unconstitutional.

2. That each case be remanded to the lower courts for such further orders and proceedings as are necessary and proper.

3. That the lower courts be instructed to enter decrees enjoining the defendants "forthwith" in making racial distinctions in admitting children to public schools.

Give 'em A Year—Brownell

But, if the defendants say it is impracticable or inequitable to admit colored children immediately to nonsegregated schools, the court should order the defendants to propose and, on approval by the court, put into effective operation a program for changing to a nonsegregated school system "as expeditiously as the circumstances permit."

4. That a period of one year be fixed to accomplish integration.

5. That the Supreme Court retain jurisdiction to enter further orders and decrees, if necessary.

NAACP: It is unable, in good faith, to suggest terms for a decree which will secure effective gradual adjustment because no such decree will protect the rights of colored children.

That County Only

Virginia: If the District Court is reversed, the Virginia case should be remanded to the lower court to require amalgamation of high school pupils of Prince Edward county "within a reasonable time in such manner as the court shall find reasonable in all the circumstances."

South Carolina: The Supreme Court should not and could not formulate a detailed decree, nor should it appoint a special master. Rather, it should remand the case to the District Court for further proceedings in conformity with the Supreme Court's opinion.

Kansas: The judgment of the lower court should simply be reversed and the case remanded with instructions to frame an appropriate decree.

Nothing Worse—Delaware

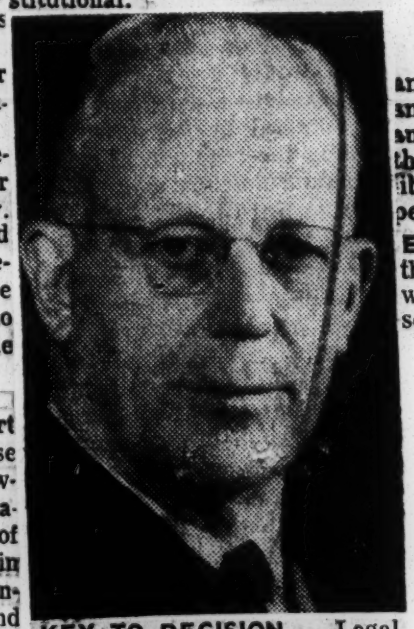
Delaware: If the Supreme Court is unwilling to simply affirm the decision of the Delaware Supreme Court, there could be nothing worse than for the Supreme Court to frame a detailed decree in the Delaware case.

District of Columbia: The petitioners say the terms of the decree should be stated by the District Court.

The Corporation Counsel suggests that the cases be remanded to the District Courts with directions to integrate schools "as expeditiously as conditions warrant."

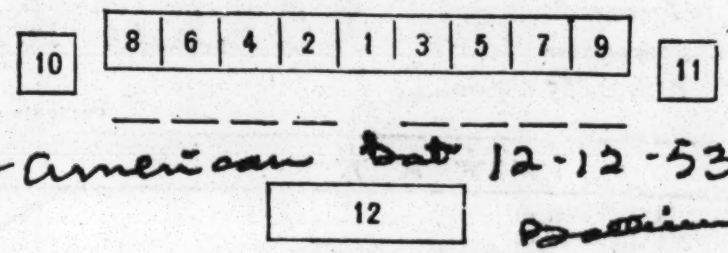
In the Virginia, South Carolina, Arkansas and Delaware cases, state laws requiring racial segregation in the public schools are challenged as unconstitutional.

The District of Columbia case presents the clear-cut issue of whether racial segregation in public schools is in itself unconstitutional.



KEY TO DECISION — Legal experts believe newly-appointed Chief Justice Earl Warren will tip the Supreme Court balance in favor of a decision ending segregated public schools.

THE COURT



Apo American Date 12-12-53
Baltimore, Md.

1. Chief Justice Warren
2. Mr. Justice Black
3. Mr. Justice Reed
4. Mr. Justice Frankfurter
5. Mr. Justice Douglas
6. Mr. Justice Jackson
7. Mr. Justice Burton
8. Mr. Justice Clark
9. Mr. Justice Minton
10. The Clerk's Desk
11. The Marshal's Desk
12. Counsel's Desk

SILENCE IS REQUESTED — When spectators file into the Supreme Court hearing chamber, they are requested to be silent. The justices will be seated as indicated in the diagram above, as well as other court functionaries.

AMENDMENT V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

GUARANTEEING FREEDOM — Above are the words of the Fifth Amendment to the U.S. Constitution, which figures in the hearing this week on the suit by the NAACP to bring about the end of segregated schools in this nation.

AMENDMENT XIV

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

EQUAL PROTECTION—This is the pivotal amendment upon which stand four of the five school cases being heard by the Supreme Court this week. The case of segregated schools in Washington will be resolved primarily upon other issues.

Thurgood Marshall Cites Abolitionist Views On Equality

Noted John W. Davis, 1924 Democrat Nominee For President, Criticises Atty-Gen. Brownell's Statement, Denying 39th Congress Approved Racial Segregation; Supreme Court To Render Epoch-Making Decision On Separate Schools

Although Attorney General Herbert Brownell rendered a masterful brief that put the present National Administration squarely behind the "equal rights" position of the 14th Amendment to the Constitution of the United States, his position was assailed on Monday of this week at the beginning of arguments PRO and CON on whether the 39th Congress intended to outlaw racial segregation in public schools, according to newspaper reports of these arguments that were published in newspapers on Tuesday.

One newspaper credited Thurgood Marshall, Atty. for the N. A. A. C. P., as saying Mr. Brownell's argument was "fallacious," when he said it was not clear that the 39th Congress meant specifically to outlaw separate schools.

On the other hand, Attorney John W. Davis, who was the 1924 Democratic Candidate for President, and who represented South Carolina in its fight to retain separate schools, was quoted as saying Mr. Brownell reached a "lame and impotent conclusion," by his failure to state that the Congress which passed the 14th Amendment DID NOT intend to make separate schools unlawful.

This question, whether or not the Congress which passed the 14th Amendment meant specifically to outlaw separate schools, seemed to have been one when discussed by the noted lawyers, white on one side and colored on the other, to be one that in the final analysis would have to be answered by the Chief Justice and his eight associates, or at least a majority of the Supreme Court.

In his argument, Mr. Marshall, as he had stated in his brief, called attention to the fact that the 39th Congress was composed of a majority of members who were Abolitionists—men who had stirred the nation in their appeals for the abolition of slavery. The fact that these men advocated doing away with slavery and making the slaves citizens, carried with it the insistence, just as the 14th Amendment says, "no State shall make or enforce any law that shall abridge the privileges or immunities of citizens of the United States . . ." That is Attorney Marshall's contention, even in face of the long-established Old South custom of keeping the races separate in school matters so as to facilitate rank racial discrimination toward the Negro in what he is provided with for the education of his children.

The papers do not give any sound argument, based on facts that the Hon. John W. Davis advanced in an effort to prove that the 39th Congress intended to uphold racial segregation in schools. What was gleaned from Tuesday morning's newspapers was a conclusion that Mr. Davis made a typical Old South argument, not based on any admission that the Negro was made an "equal" citizen by the 14th Amendment but based apparently upon the belief that "it was not good for the Negro, himself," to be accorded school equality.

But, despite what both Mr. Marshall and Mr. Davis said in criticism of the findings of Attorney General Brownell, the Attorney General did dismiss as a minor issue, the fact he could not find when the 39th Congress said specifically that "there shall no longer be any separate schools in the nation." Mr. Brownell held that whatever had been conceded to "custom" in the past, was nevertheless invalid in the face of the specific words of the 14th Amendment saying that "no State shall make or enforce a law that denies to any person within its jurisdiction the equal protection of the laws."

There is hardly a person in the United States who does not know that in the States with separate school systems, for many years there had been no actual attempt to provide colored school children with schools equal to those provided for white children. In other words, States with separate schools had not even shown a decent respect for the provision of the 14th Amendment in school matters.

The states had not even shown respect for the way the law was laid down in the Plessy-Ferguson case of nearly 60 years ago, in which it was provided that the States maintaining separate facilities based on race, should make them equal for the members of both races.

There are many persons who contend that had the States maintaining separate schools honestly tried to make them equal, following the decision in the Plessy Ferguson case, there probably never would have been such a fight for equality as is now taking place in the Supreme Court.

The papers indicate that Attorney Marshall challenged the Supreme Court to stand by some of its recent decisions, rendered in cases affecting segregation in schools. These decisions undoubtedly outlawed discrimination as affecting the institutions of higher learning. One of them refused to let Oklahoma have time to build a separate law school for a young woman, saying the States must furnish a colored applicant for a chance to study law the facilities to do so as promptly as if she were white. Another decision forbade Oklahoma University authorities the right to force a colored college professor to sit in a separate room from the white students while listening to the teacher and the other students discuss the lesson.

Incidentally, nothing revolutionary has happened in any of the States where the courts have outlawed segregation. In Kentucky where a District Federal Judge handed down an anti-segregation decision, colored students seeking university training are attending the University of Kentucky in considerable numbers.

These facts, it is possible, will have a bearing on the Supreme Court decision quite contrary to the expressed "fears" the aged Attorney John W. Davis predicts, when he says that a ban on public school segregation might cost the Negroes more than they gain.

The present segregation cases first went before the Supreme Court in December of last year. It was on June 8 and 9 of this year when the court put off its decision, asking the attorneys to go back and get more data for another argument of the cases. The Court wanted the attorneys, among other things, to cite facts showing whether the Congress and the States that adopted the 14th Amendment did or did not intend that segregation in schools was to be abolished.

That seems to be the principal issue the Court is asking the lawyers on both sides to state and to prove with evidence.

Mr. Marshall and the other N. A. A. C. P. Attorneys seem to have put their reliance upon the character of the men in Congress who adopted the 14th Amendment.

Mr. Davis and his associates say the Congress and the States were concerned only with abolishing slavery. Slavery, however was abolished by the 13th Amendment and apparently the 14th Amendment was later adopted to make sure that the emancipated slaves were accorded all of the rights any other citizens enjoyed.

Mr. Brownell, the Attorney General, who it is known conferred with President Eisenhower before filing his brief, says that it is not specifically stated that school segregation was prohibited by the 14th Amendment, but contends this was not necessary, in view of what the Amendment specifically provides for—equality of citizenship.

It would appear that if the Court approves the viewpoint of the Eisenhower Administration as set forth in the brief of Mr. Brownell, an additional barrier to racial discrimination by the Federal Government and the several States will have been set up by the latest of many momentous court decisions on the 14th Amendment to the Constitution.

In this connection it is recalled that the noted Roscoe Simmons, superb orator and student of history, always contended that all of the Civil Rights laws the Negro needed for his protection were in the 14th Amendment. Simmons an unwavering Republican leader for over 40 years, always expressed his amusement at the antics of other colored leaders when they glorified Democratis leaders who made promises of "Civil Rights laws for Negroes."

12d 1953

EDUCATION

COLLEGES

Court Says Texas Must Admit All

NEW ORLEANS—Students of all races must be admitted to Hardin Junior College, a United State Fifth Circuit Court judge ruled here last week.

In the decision, the court upheld a lower court ruling admitting six previously barred students to the college, located at Wichita Falls, Texas. The six had filed suit charging racial discrimination.

The complainants, besides seeking a ruling admitting them to the institution, also asked that a three-judge Federal court be convened to determine the constitutionality of the Texas constitution and laws requiring racial segregation in state educational institutions.

The United States District court for the northern district of Texas had ordered the admittance and enjoined the college from discrimination against them.

However, the district court and the appeals court refused to consider the constitutionality of segregation. Both rested the case on the equal protection clause of the 14th amendment of the U.S. Constitution.

Justice Black Submits Stay Request To Allow Negro To Remain In LSU

WASHINGTON, Nov. 9 (AP)—Justice Black has submitted to the Supreme Court a request that a stay be issued which would assure Alexander P. Tureaud Jr., 17-year-old Negro, being permitted to remain as a student in Louisiana State University.

The request for a stay was submitted to Black by the court clerk earlier today. The full court is not expected to act on the request immediately. Announcement of the decision may be made next Monday.

Tureaud, son of a New Orleans attorney, is the first Negro undergraduate in the University's history. He was admitted at the start of the fall term on an order by the U.S. District Court at Baton Rouge.

The U.S. Circuit Court in New Orleans decided, however, the district court lacked authority to issue a temporary injunction in favor of Tureaud. It said the case should have been heard by a special three-judge federal court.

Tureaud then asked Justice Black for a stay of lower court proceedings, pending final action on an appeal filed with the highest tribunal. The appeal asks review of the circuit court's decision and its reversal. The Supreme Court's action on the appeal also may be announced next Monday.

LSU Expels First Negro Undergrad, Awaits Ruling

BATON ROUGE, La., Nov. 11 (AP)—Louisiana State University expelled its first Negro undergraduate student today under a court ruling but as the student, 17-year-old A. P. Tureaud Jr. left the campus, his father disclosed that the U. S. Supreme Court has been asked to review the case.

The younger Tureaud had been admitted to the university this fall under an injunction by U.S. District Judge J. Skelly Wright, but the U.S. Court of Appeals here reversed him on the grounds the injunction motion should have been heard by a three-judge court.

In line with this ruling, Judge Wright vacated his own order last Monday and the university, acting on the advice of its attorneys, "cancelled the registration" of the Negro today.

Tureaud's entrance, the university said in a statement, was "conditionally accepted and subject to future court action. Thus the order vacating the temporary injunction renders the registration of Tureaud void."

Tureaud went home to New Orleans, where his father is an attorney. The elder Tureaud said the U.S. Supreme Court was asked for a stay on the appeals court ruling, but "from reports" it was not issued.

"We may hear from the Supreme Court Monday either granting or denying a write of certiorari," he said. The writ was sought to enable young Tureaud to stay in school pending a high court review of the case.

In fighting for admission to LSU Tureaud contended that separate but equal facilities were not available at Southern University, a state Negro college, in the arts and sciences courses he desired.

HIGH COURT URGED TO END SCHOOL BIAS

Justice Department Brief Tells Tribunal It Has the Power to Compel States to Act

By LUTHER A. HUSTON
Special to THE NEW YORK TIMES.

WASHINGTON, Nov. 27 — The Department of Justice advised the Supreme Court today that it had ample constitutional power to outlaw racial segregation in the public schools and should do so.

It was a question, "not of legislative policy but of constitutional power," the department asserted in a brief filed with the clerk of the court, and "must ultimately be determined by this court on the basis of its construction of the Fourteenth Amendment."

The Justice Department construed that amendment to compel "a state to grant the benefits of education to all its people equally, without regard to differences of race or color."

The Fourteenth Amendment was passed by Congress on June 16, 1866 and became effective on July 21, 1868 when thirty of the thirty-seven states then in the Union had ratified it. It provides that "on state shall make or enforce any law that shall abridge the privileges or immunities of citizens of the United States."

In five cases pending before the High Court, segregation in the public schools has been attacked as unconstitutional under the fourteenth Amendment. The cases come from South Carolina, Virginia, Kansas, Delaware and the District of Columbia.

Thirteen other states require segregation of Negro and white pupils in public schools, and three others permit it.

Defenders of segregation rely chiefly on a decision of the Supreme Court more than fifty years ago. In that case, Plessy v. Ferguson, the court ruled that segregation was not unconstitutional if separate facilities provided for the white and Negro races were equal.

Cited as a Precedent

School segregation was not an issue in that case but the decision has been cited as precedent in virtually all cases involving any phase of the segregation question since that time.

The Justice Department joined those who argue that the "separate but equal" doctrine should be set aside when it said in its brief:

"The judicial inquiry, it must be emphasized, is not simply to determine whether there is equality as between schools; the Constitution requires that there be equality as between persons."

The five cases now before the court were argued last December but not decided during the term that ended in June.

In setting them for reargument during the current term, the court asked all parties involved, including the Federal Government, to discuss in briefs and in oral arguments five specific questions. Lawyers representing Negroes, who are appealing lower court decisions upholding the constitutionality of segregation, filed their brief Nov. 9. Delaware also filed its answers to the court's questions on that date.

South Carolina, Virginia, Kansas and the District of Columbia briefs are expected within the next few days since the cases have been assigned for oral arguments beginning Dec. 7.

The Court's Five Questions

These were the five questions the High Court wanted answered:

1. Whether Congress in submitting the Fourteenth Amendment and the states in ratifying it, intended or understood that it would abolish segregation in the public schools?
2. If that was not the intention or the understanding at that time, did Congress and the state understand that future Congresses or the courts might outlaw such segregation?
3. Is it within the judicial power, in construing the amendment, to abolish segregation in the public schools?
4. If it was decided that segregation was unconstitutional, should a court decree order admission of Negroes to white schools forthwith or did it have equity power to permit a gradual adjustment to be brought about?
5. If the court exercised its equity powers to end segregation, should it formulate detailed decrees or should it remand the cases to the lower courts to formulate decrees in accordance with the high court's ruling?

Full Equality Is Backed

The Justice Department's answers to these questions were summarized in the following conclusions:

¶"That the primary and pervasive purpose of the Fourteenth Amendment, as is shown by its history and as has repeatedly been declared by this court, was to secure for Negroes full and complete equality before the law and to abolish all legal distinctions based on race or color.

¶"That the legislative history of the amendment in Congress is not conclusive.

¶"That the available materials relating to ratification proceedings in the various state Legislatures are too scanty and incomplete, and the specific references to school segregation too few and scattered, to justify any definite conclusion as to the existence of a general understandi ngin such Legislatures as to the effect which the amendment would have on school segregation.

¶"That it is within the judicial power to direct such relief as will be effective and just in eliminating segregated school systems.

¶"That if the Court holds that laws providing for separate schools for white and colored children are unconstitutional, it should remand the instant cases to the lower courts with directions to carry out the court's decision as expeditiously as the particular circumstances permit."

James P. McGranery, former Attorney General, filed a brief for the Government last December in which he took the position that segregation in the schools should be abolished and that the "doctrine of separate but equal should now be discarded as a negation of rights secured by the Constitution."

McGranery's Position Upheld

It was emphasized at the Justice Department that today's brief did not in any way disturb that position.

Herbert Brownell Jr., Mr. McGranery's successor, said no attempt had been made in the new brief to re-examine the questions argued at the last term. Its purpose, he said, was only to submit to the court "an objective nonadversary discussion of the questions stated in the court's order of reargument."

The brief was prepared under the direction of J. Lee Rankin, Assistant Attorney General in charge of the Division of Executive Adjudications. His principal aide was Philip Elman, Special Assistant to the Attorney General.

Justice Department lawyers who helped draft the brief were Leon Ulman, William J. Lamont, David O. Walter, M. Magdalena Schoch, Joseph A. Mullin and John J. Cound.

Mr. Rankin will represent the Government in the oral arguments. Eleven hours have been alloted for these discussions before the court, with one hour assigned to the Government.

Debates in Congress Reviewed

Fifty-two pages of the 188-page brief were devoted to a review of debates in Congress when the Fourteenth Amendment and related proposals had been up for discussion. Names that flashed in the news during the Reconstruction Era studded the Justice Department's document.

Among them was Henry J. Raymond, publisher of The New York Times, who then was a member of the House of Representatives. Mr. Raymond had voted twice against civil right measures that, the brief asserted, embodied the same principle as the proposed amendment, but said he would support the amendment because he was "heartily in favor of the main object" it was intended to achieve.

Although the Congressional debates made scant mention of school segregation, the Justice Department concluded that it was the clear intent of the legislators that the Fourteenth Amendment would accomplish its abolition. In this, the Government supported the position taken by lawyers for Negro groups.

Delaware, however, in its brief, held that the Congressional debates offered no "convincing proof" that a purpose of the amendment was to wipe out educational segregation.

One of the arguments advanced by those supporting the constitutionality of segregation was that Congress passed laws in 1866 that established segregated schools in the District of Columbia. The Justice Department said these laws had been passed in the exercise of Congressional jurisdiction over the district, "to which the Fourteenth Amendment in terms did not apply."

Delaware also raised the point, which other states are expected to adopt, that the question was legislative, not judicial, and the High Court did not have authority to outlaw segregation in the absence of legislation by Congress specifically intended to accomplish that purpose.

The Justice Department disagrees strongly with this view.

"Congress and the Court have concurrent power," it asserted, "each within its own proper sphere, to enforce the Fourteenth Amendment. Judicial remedies are specific and directed to particular cases and parties: legislative remedies are necessarily general.

"An available judicial remedy for violation of the amendment cannot be, and has never been, withheld merely because Congress has not found it necessary to enact general remedial legislation."

The Court's power to invalidate violations of the amendment, the brief contended, has been established by previous decision of the tribunal. They extend, according to the Justice Department, "to every kind of state action, whether judicial, legislative, or executive, civil or criminal, substantive or procedural."

Court Faces Segregation Issue Today

WASHINGTON, Dec. 6 (AP)—The U.S. Supreme Court tomorrow takes up for the second time the question of whether it should outlaw segregation in public schools.

In five cases which have been before the highest tribunal for more than a year, Negro parents ask a ruling that separation of their children from white pupils is a stigmatizing discrimination barred by the Constitution. They want segregation ended by the start of the next school term.

Virginia, South Carolina and Kansas say the court (1) has no power to end segregation and (2) the Constitution does not require it. The District of Columbia government says Congress set up a dual school system here and Congress alone should be the source of any change.

DELAWARE JOINS

Delaware joined these three states and the District in saying that if segregation is declared unconstitutional, time should be given local school officials to make the change.

Atty. Gen. Brownell, in a brief filed on behalf of the United States, asserted the tribunal has full authority to end segregation. Further, he said the Constitution's 14th Amendment had the purpose of abolishing all legal distinctions based on race.

Negro parents would mean the end of dual school systems throughout the nation.

These conflicting views will be debated before the nine justices in three days of arguments. Technically, they are called reargu-ments since the cases were argued before the court for three days last December. Without making a decision then, the justices called for reargument and asked for more information concerning the intent of Congress and the states in approving the 14th Amendment.

DUE PROCESS

This amendment, adopted after the War Between the States, says states may not deny any person due process or equal protection of the laws.

While only four states and the District of Columbia are specifically involved in the cases now pending, it is generally assumed that a decision in favor of the

Backer Of Ike Urges Ouster Of Brownell

Post Herald

Alabamian Plans Letter Campaign

MONTGOMERY, Dec. 2 (U.P.) Montgomery Attorney Lea Harris, one of the leaders of the "Democrats for Eisenhower" movement in the last Presidential campaign, has called for the resignation of U. S. Atty. Gen. Brownell because of his stand on school segregation.

In a letter to President Eisenhower Harris told the President that Brownell is "advising your political administration to political disaster as rapidly as he can."

Harris also criticized Brownell's handling of the Harry Dexter White case. He said the White case began as a "potential political bombshell," and turned into a "politically motivated dud."

Harris said in his letter to the President that he was going to write to "innumerable Eisenhower Democrats throughout the South to withhold further political aid to your administration until the 'advisor to defeat' has departed from your cabinet."

Harris was one of the leaders of a political faction that fought to get a slate of "Democrats for Eisenhower" on the general election ballot in 1952 as candidate for presidential electors.

D. C. Files Brief

Three-States Tell High Court It Can't Integrate Schools

By Frank R. Kent, Jr.
Post Reporter

Virginia yesterday, in effect served notice on the Supreme Court that a ruling by that tribunal against segregation in public schools in the five cases now pending would be regarded by the state as applying only to high schools in one county.

The brief was among six filed yesterday by the District of Columbia, South Carolina, Kansas, attorneys representing Negro plaintiffs in Delaware, and American Veterans of World War II.

These and briefs filed previously by the Justice Department, the State of Delaware and the National Association for the Advancement of Colored People are in response to a request last June by the Court for additional information concerning the intent of Congress in adopting the Fourteenth Amendment and regarding methods of achieving integration should the Court rule against segregation in public schools in the five cases pending.

The Justice Department and the Amvets filed their briefs as amici curiae (friends of the Court). The cases arose from challenges of segregation in public schools in the four states named and the District of Columbia.

It generally has been assumed that the Court's ruling for the plaintiffs in these cases would mean the probable end of public school racial segregation throughout the Nation. Georgia has taken steps to replace public schools with state-subsidized schools. The elimination of public schools in South Carolina also has been forecast.

Most of the briefs have dealt with the question on broad lines. The Virginia brief, however, points out that the cases are limited to specific instances in five localities. The brief says that a Court ruling against segregation would not affect Nottoway County, Va., adjoining Prince Edward County where the Virginia case originated. Nor, says the brief, would it affect North Carolina, yet actually it would result in an "upheaval" in all those places.

In discussing the manner in which the end of segregation should be handled in the schools should the Court rule against it, the Virginia brief said a decree of the court should be remanded to the lower court with instructions "to require the amalgamation of the high schools of Prince Edward County, Va., within a reasonable time in such a manner as that court shall find reasonable in all circumstances.

The brief says: "Finally the Court is not legislating a nation-wide statute to abolish school segregation in the high schools of Prince Edward County, Va.

In contrast to this view that the Court would rule only in specific instances, however, the brief says, segregated schools are not an isolated custom, but are a pattern followed by one-third of the Nation.

This pattern, the brief says, has been followed under the scrutiny of Congress, the State Legislatures and the courts for a century. To change it, the brief asserts, by a court degree of "uncertain and indirect effect" in different localities would be judicial legislation of "unprecedented scope and effect."

The District brief says the dual school system was set up by Congress which governs the Capital under laws separate from national legislation. Segregation opponents in the District have argued that Congress did not make a dual system mandatory, but simply provided for it.

The Disrict brief was filed by the Corporation Counsel on behalf of the school board. It was learned yesterday that the brief previously had been reviewed by the Attorney General. Legal observers said they could not remember a similar instance. They pointed out that the Attorney General has no jurisdiction over the District counsel. The reason for the action was not divulged.

It was pointed out, however, that the District is in the position of defending its dual school system whereas the Justice Department brief called for an end to segregation in public schools. The brief in its summary yesterday said: "As forcefully as the plain statement thereof can make it, counsel for the respondents state to the court that the position they take and have taken in argument and in the brief for respondents filed at the October term 1952 is a strictly legal position which they, as officers of the Court, feel duty-bound to present because of their belief in its soundness."

The brief was signed by Vernon E. West, Coropration Counsel; Chester H. Gray, principal assistant corporation counsel, Milton D. Korman, assistant corporation counsel, and Lyman J. Umstead, assistant corporation counsel.

Pointing out that the previous brief already had argued the constitutional aspects, the latest document said it appeared the Fourteenth Amendment does not apply to Congress when legislating for the District. The challengers of District school segregation have woven their case more about the "due process" clause of the Fifth Amendment.

The brief dealt mainly with the accomplishment of integration in the schools if the court should rule against segregation.

Although no gradual readjustment to integration appeared necessary in the District, the brief pointed out that something more than a "mere reshuing" of the pupils is required. It added that the combining of the lists of white and Negro teachers with the attendant adminitsrative problem of promotions and replacements is involved. It also said that in order to round out the regrouping of 104,000 children "in a community as far south as Washington," proper indoctrination of the 3500 teachers in the principles of inter-group relations "is a prerequisite."

This not only would consume time, but would require financing of a program and the procurement of suitable instructors. Counsel asserted they did no tadvocate and saw no need for a protracted extension of the time for integration in the District schools.

"They do, however, firmly believe that an adequate time is necessary and advisable to accomplish the change in the manner in which acknowledged leaders in education believe that such a change should be properly accomplished," the District chief asserted.

Virgniia and South Carolina in their briefs both cited the history of the dual system in the District to support their contentions that Congress did not intend the Fourteenth Amendment to encompass the abolition of public school segregation.

The Virginia brief said: "No Congress would, we conceive, propose a Consttituional Amendment which it thought would abolish segregated schools in territory subject to its direct control."

The South Carolina brief also said that it was not within the judicial power to construe the Fourteenth Amendment adversely to the understanding of its framers as abolishing segregation in schools.

The brief also stated that each case of segregation must be decided on the facts presented in the record.

The Kansas brief pointed out that it merely was defending the validity of the state statutes. It pointed out that the Board of Education of Topeka which had been sued, on September 3, 1953, had voted to end segregation. The people of Kansas, the brief said, are abandoning segregation wherever local conditions and attitudes make it feasible.

"Federal interference," the brief said, "is neither necessary nor justified."

The Amvets brief, also based on the Topeka case, said the Court had the authority and duty to end segregation. It also said pupils should enter segregated school the term following the Court's ruling against segregation.

The brief, filed by a group of Negro parents in Delaware, took issue with the State's contention that the Constitutional question is not involved. The state said it merely was disputing a lower court order which does not give sufficient time to set up equal facilities under the segregated system called for under its constitution.

The parents said Delaware had a long history of inferior educational opportunities for Negroes and of bias against Negro rights. It was filed by Thurgood Marshall, Louis L. Redding and Jack Greenberg to supplement issues raised in the consolidated brief by the NAACP.

SCHOOL BIAS ISSUE DIVIDES THE SOUTH

High Court Decision Awaited —3 States Already Acting to Bypass Any Integration

By JOHN N. POPHAM

Special to THE NEW YORK TIMES.

CHATTANOOGA, Tenn., Dec. 13 —With arguments completed last week before the United States Supreme Court on the issue of school racial segregation, this was the picture in the South today:

In South Carolina and Georgia the Legislatures have been prepared for action that could abolish the public school systems.

In Mississippi, the House of Representatives last week adopted by a two-thirds vote a resolution to submit a constitutional amendment next March that would give the Legislature standby power to eliminate the public schools. The measure faces a Senate vote this week.

In Tennessee, Gov. Frank Clement has stuck by his statement of last summer that "the public schools of Tennessee have been operating since the first flat boat came in and the public schools will continue to operate for the benefit of all of our school children."

Gov. Francis Cherry of Arkansas said recently that the state would have to abide by whatever decision the high court handed down "because that will be the law." North Carolina's Governor, William B. Umstead, has expressed the hope that segregated schools can be continued, but has said he will make no "political gestures" toward the Supreme Court.

'Premature' Action Opposed

Altogether seventeen states have compulsory segregation laws affecting about 12,000,000 children of both races.

The most determined states continue to be South Carolina, George and Mississippi.

Their proposals, however, do not have a completely united line of support. In each instance critics have charged that the actions contemplated would be "dangerously premature" and have hinted that some personal and factional politics has intruded.

These critics point out that Govs. Herman E. Talmadge of Georgia and James F. Byrnes of South Carolina complete their four-year terms at the end of 1954, and under state law they cannot succeed themselves.

Therefore, it is argued, a Supreme Court decision in the late spring or early fall of 1954 would mean that the new Governor taking office in January, 1955, would be the one actually confronted with the situation. Many problems are expected, involving teacher pay and pensions, Federal grants in aid and the transfer of title to school buildings.

Consequently many of those opposing the courses promulgated by Messrs. Byrnes and Talmadge raise this question: whether state political factions led by these Governors have not been interested, in part, in shaping a campaign issue that would help elect the gubernatorial candidate of their choice in next summer's primaries.

These critics also declare that through such strategy Governors Byrnes and Talmadge would perhaps stand to increase their long-range political popularity by being able to state, in any critical period ahead, that during their tenure they had kept the door closed on racially integrated schools.

Gov. Hugh White of Mississippi does not complete his term until the end of 1955. However, opponents of the proposal now before the Mississippi General Assembly feel that the issue is being pressed with considerable regard to the key political races in 1954 and 1955.

Political Currents Interfere

Against this background of aggressive political action in some areas and "wait and see" tactics in others, those familiar with the cross-currents of opinion in the South hold for the most part that a large majority of the white persons and even some Negroes want to keep intact the policy of segregated schools.

For this reason, they say, the political reaction has been varied.

It is this over-all conflict of political interpretations in a dozen or more states and the widespread support for segregated public schools, many observers feel, that has made it impractical, if not impossible at this time, for parent-teacher groups, educational leaders, and school superintendents and boards to evolve any master plan to meet a court order that might end segregation.

By and large, these responsible groups, who would actually handle the attempts to change the segregated schools, must operate in the present political climate. Many are now trying to form alliances and plan strategy for defeating any proposals to do away with the public schools.

A strong hope is expressed frequently that the court will render a decision that will make it clear and simple as to what steps must be taken and when.

A number of independent organizations of national repute reportedly are preparing a detailed study of school racial integration in other sections of the country, emphasizing the potentials for planning and the accomplishments that resulted.

These studies may be released in a few months to help Southern educators.

Economic Factor Stressed

In addition to this general picture of political conflict and drift and nonplanning at the school level, there are the seldom-emphasized findings and studies of the South's interracial experts.

Many of these experts contend that the possibilities for school integration can be spelled out in direct proportion to the price involved. They say that this has been the lesson derived from gradual improvements in Negro voting and other racial gains in the region in recent years.

In areas where the Negro population is high, often 50 per cent and more, and where the economic and social forces are strongly propped by racial customs, the controlling groups may want segregation at any cost, these experts believe, even if it means flouting the law and eliminating public schools.

However, they note that some mountain counties in the upper South will have as few as ten Negro high school children. Rather than meet the cost of maintaining a separate school, which might satisfy the law if equal in every respect, such counties might be willing to integrate the few Negro students. The matter of equal facilities may be revised, however, by the court's decision.

As far as population goes, there are two counties in Mississippi in the northeast corner with a Negro population of only about 5 per cent, five counties connecting across the upper tier of Alabama with a 5 per cent Negro population in each and a score of such counties in eastern Tennessee, western Virginia and northwestern Arkansas, all with 5 per cent and less.

The Southern Regional Council, the South's foremost interracial organization with representation from fourteen states, recently distributed to school and church groups 10,000 copies of a pamphlet entitled "The Schools and the Courts."

The council noted that a court ruling against segregation in the public schools "would simply mean that children must be admitted, without regard to race, to the schools serving their district."

"Under the segregated housing arrangements found in most Southern cities, few schools would be greatly affected," the council wrote. "Rather, integration would grow in the schools along with increased integration in the community as a whole."

The council said that it had found that in parts of the South where the Negro population was small, "there appears to be a growing feeling that separate schools are prohibitively costly and difficult to maintain."

It cited the case of Anderson County in eastern Tennessee, where school officials were responsible for the education of about 130 Negro children, about twenty of whom were in high school. Because the county could not afford to build equal high school facilities for twenty students, the pupils were transported by bus forty miles a day to a Negro high school in Knoxville.

When this case became involved in a suit in the Federal district court, the principal of the county's white high school, the pamphlet reported, declared that he would have admitted the few Negroes "without hesitation" had it not been for state segregation laws.

The council also stated that in a report for the school period ended June 30, 1951, the Kentucky state superintendent, Boswell B. Hodgkin, had asked for legal amendments to allow local school boards to provide nonsegregated schools when they elected to do so.

The council said that its studies of the Southern school issue led it to believe that "the great danger is not over-hasty change, but too great a lag between law and practice."

If "political leaders and law enforcement officers prove responsible," it declared, "there is every reason to expect the people of the South to react as law-abiding citizens."

Cost Is Seen As More Than Can Be Gained

But NAACP Asks Freedom From Slavery

BY CHARLOTTE G. MOULTON
United Press Staff Writer

WASHINGTON, Dec. 7—Noted Constitutional Attorney John W. Davis, his voice choked with emotion, told the Supreme Court today a ban on public school segregation might cost Negroes more than they gain.

But Attorney Thurgood Marshall of New York, the nation's best known Negro attorney, urged the high court to outlaw segregated education as a "[illegible] heritage from slavery.

Marshall joined Spottswood Robinson III of Richmond, Va., in arguing that any kind of segregation is illegal under the 14th Amendment to the Constitution.

The silver-haired Davis, 1924 Democratic presidential candidate and former solicitor general, said neither the Supreme Court nor Congress has the power to order Negro and white children to be "re-assorted or co-mingled in public schools."

If the court decides differently, Davis declared, the results "would not be pleasing."

Marshall and Robinson represent the National Association for Advancement of Colored People who seek to abolish public school segregation now practiced or permitted in 21 states.

Differs Sharply

Davis differed sharply with their interpretation of the 14th amendment, declaring it was designed to implement the outlawing of slavery. He said it contained no prohibition against segregated but equal schools.

"This honored court," he said in a 59-minute argument, "cannot sit as a glorified board of education for South Carolina or any other state. It cannot sit in the chair of the Legislature of South Carolina and mould its educational system."

The hearings continued the court's exhaustive study of the politically-explosive and historically-significant issue.

The court heard arguments last year from the same attorneys. It then requested new briefs on specific points in five test cases brought by Negro parents against the segregated schools systems of South Carolina, Virginia, Kansas, Delaware, and the District of Columbia.

The NAACP is interested in all the cases. Davis is attorney for only Virginia and South Carolina.

Will Be Continued

The re-argments, revolving largely around the legislative intent of the framers of the 14th Amendment, will continue Tuesday and possibly Wednesday.

Davis said he fears the entire system of segregated schools may be "thrown away on some fancy question of racial prestige."

He said Congress had no intent of outlawing school segregation when it took steps to add the 14th Amendment to the Constitution in 1866.

Marshall and Robinson contended that 'equal protectionof the law promised by the 14th Amendment to all citizens is, of itself, enough to outlaw segregation.

Calls It Fallacious

Davis called this fallacious, declaring the Negro position assumes the "abolitionist crusade" before the Civil War was directed against public school segregation as well as slavery.

The crusade "was directed at one thing only—abolition of slavery," he said.

David said Atty. Gen. Herbert Brownell Jr. fell into the same "fallacy" in the government brief supporting the NAACP case.

Brownell had argued that the record is not clear on whether the 39th Congress in 1866 expressly intended the 14th Amendment to outlaw school segregation. But he said the intent was to get rid of all laws based on race. David called this "a lame and impotent conclusion."

Marshall said the 14th Amendment was intended to raise the Negro to "complete equality" with whites—"and it said so."

Any arguments that states can classify persons on the basis of race or ancestry, he added, are "just out of step" with Supreme Court decisions.

"In any area where it touches individuals concerned in any form or fashion," he said, "it is clear that states cannot separate people —saying that one should go here and one should go there. . . .

"Any legislation setting up a caste system is of itself in violation of the 14th Amendment."

School Bias Argument To Resume Tomorrow

WASHINGTON, Dec. 5 (U.P.)—The Supreme Court will hear more arguments Monday on racial segregation in the public schools—a Constitutional issue which some Southern states say may force them to set up and finance private schools.

The court carefully examined the question last term on the basis of five test cases from South Carolina, Virginia, Delaware, Kansas and the District of Columbia, but found the matter so complex it ordered more arguments this fall.

The tribunal posed questions of Constitutional history and law which attorneys for both sides answered in thick briefs filed this week. Monday's oral arguments will be on the claims made in the briefs.

All Seats Gone

Since October, court attaches have been turning down requests for seats for the revived courtroom drama. The cast of lawyers will feature the same protagonists who spearheaded arguments a year ago.

They are John W. Davis, eighty-year-old Constitutional expert who represents Virginia and South Carolina, and Thurgood Marshall, forty-five, attorney for the National Association for the Advancement of Colored People, who has won many civil rights cases for his race. Both are from New York.

The challenge, which Negroes have tried for thirty years to get before the court, has political and social overtones of major importance to the Eisenhower administration and the country in general.

14th Amendment

The Negroes say segregation is an outgrowth of slavery and, in itself, constitutes inequality, regardless of whether school facilities are good or bad. They rely on the Fourteenth Amendment to the Constitution which forbids states to deny any person "equal protection of the laws."

The political flavor stems from Republican efforts to develop a two-party system in the Democratic South by taking advantage of dissension in the Democrats' ranks. The Truman administration, which was at odds with conservative Southerners over civil rights matters, gave all-out support to the Negroes.

Former Democratic Attorney General James P. McGranery made a spirited plea that the court overturn the "separate but equal" doctrine enunciated in 1896. He asserted that the Federal government has a duty to fight for individuals whose Constitutional rights are denied.

Meanwhile, some Southern state officials, led by Govs. Herman Talmadge of Georgia and Eugene Talmadge of Georgia and James F. Byrnes of South Carolina, warned that their states would establish state-financed private schools to replace the public schools if the court outlaws segregation.

Southern View

President Eisenhower's administration is facing the likelihood of alienating the Southern elements it wants most to attract by pushing the issue to a conclusion. On Nov. 27, after talks with the President, Attorney General Herbert Brownell jr. said in a 188-page brief that the Fourteenth Amendment was clearly intended to "prohibit all legislation by the states drawn on the basis of race and color."

He urged the court to decide the question as a judicial "duty," but he did not repeat Mr. McGranery's blast against "separate but equal" nor did he put the government in the position of an advocate.

Nevertheless, Southern Democrats called the brief a "stab in the back" and a "political tactic" inspired by Republican "Left-Wing" elements. They had hoped the Administration would take a "states' rights" stand on the issue. The states have always contended that segregation is a matter for their own legislatures.

Assistant Attorney General J. Lee Rankin will represent the Justice Department, which has been allowed an hour of argument as a "friend of the court."

12d 1953

EDUCATION

To Face Court With Confidence

The importance the NAACP attaches to these cases is demonstrated by the extensive research its legal department has undertaken in preparation for the argument before the U. S. Supreme Court Dec. 7 on the issue of segregation in our public schools. Above are a few of the more than 130 lawyers, law professors, historians, and other social scientists in digging up every related fact in connection with this paramount issue. They are (l. to r.): Atty Robert L. Carter, Marshall's top assistant; Mrs. Constance Baker Motley of the legal staff, and Thurgood Marshall, brilliant chief NAACP counsel.

PUBLIC SCHOOLS

Brownell Tells High Court Jimcrow Schools Illegal

Washington (ANP).—The U. S. Supreme Court again is set to hear arguments on the constitutionality of racial segregation in the nation's public schools.

Beginning Monday, Dec. 7, the high tribunal will hear arguments in five school cases challenging jim crow schools. All five cases originally were heard in December of 1952. After deliberating for several months, the court on June 8 postponed a decision until several questions centering on the 14th amendment to the U. S. Constitution were answered.

The NAACP legal staff, representing parents of school pupils in the cases, recently filed a brief stating that the high court has the power to outlaw segregation in schools.

Taking a similar position was Atty. Gen. Herbert Brownell who last week filed a brief presenting what many considered the Eisenhower administration's position in the issue.

Louisianans are anxiously awaiting the decision of the United States Supreme Court in five public school segregation cases to see if it will have any significant bearing on the outcome of the A. P. Tureaud, Jr.-LSU case. Two weeks ago the Supreme Court said after the ouster of young Tureaud that the university could not put the court of appeals decision into effect until the high court can act on Tureaud's appeal.

A release by the NAACP office stated, "As our lawyers argue for an integrated, democratic public school system they will have the practically solid support of Negroes in all sections of the country, as well as the endorsement of the most enlightened elements of all races and faiths in all parts of the country. Against them will be arrayed the spokesmen for the most benighted elements in the country, the professional hatemongers, the timid souls who always fear change, the reactionaries who continue to look backwards to the Nineteenth Century, the weak and insecure who dread the possibility of meeting other groups in free and open competition.

"The public school system is one of the foundation stones in the structure of democracy. But if this stone itself is crumbling because of segregation it endangers the entire structure. In fighting to eliminate segregation in public school education, the NAACP is fighting to strengthen American democracy."

"At ultimate stake is the future of the anachronistic system of segregation not only in education but also in all other phases of the public life of the nation. The NAACP has long maintained that segregation is a divisive and anti-democratic device designed to perpetuate an obsolete caste system which flatly contravenes the basic ethical concepts of Judeo-Christian tradition.

"Should the court uphold this point of view it could mean that all laws requiring or permitting racial segregation in schools, transportation, recreation, shelter, and public accommodations, generally, would ultimately be invalid, the release showed.

The U. S. Department of Justice informed the Supreme Court last week that it has full powers to wipe segregation from the nation's public schools.

In a 188-page brief filed with the high tribunal, last Friday, Attorney Gen. Herbert Brownell contended that the Supreme Court not only has the power to rule in this matter, but has the responsibility of enforcing "all right arising under the 14th amendment without a waiting exercise of independent enforcement power granted congress."

The cases involved originated in Clarendon County, S. C., Prince Edward County, Va., Wilmington, Del., Topeka, Kan., and Washington, D. C.

In the Wilmington case, Negroes won the right to enter formerly all-white schools. However, officials there appealed the decision.

Since the suit was filed, Topeka has officially ended segregation in its elementary grades. Junior and senior high schools have been integrated for some time.

The impending high court decision is being awaited by whites as well as Negroes throughout the nation because of its social and economic implications.

When Thurgood Marshall and the other NAACP lawyers associated with him addr[illegible] the jus-

tices of the country's highest tribunal they will argue the merit of the cases before the court. But implicit in their argument will be a challenge to the validity of all legislation which separates one American from another on the to-

tally irrelevant basis of race, color, religion or national origin. They will contend, at least by implication, that integration cannot be a halfway measure. Our nation cannot remain half-integrated and half-segregated today any more than it could continue half-free and half-slave a century ago, the release pointed out.

ANTI-SEGREGATION STAND

Ass't Attorney General States Administration's Stand On Issue

BY LOUIS LAUTIER
Washington Correspondent Atlanta Daily World And SNS

WASHINGTON, D. C. — The corporation counsel of the District of Columbia, at the end of the second day of oral argument in the school segregation cases, was asked to find out whether his office still represents the District of Columbia Board of Education in the case involving segregation in the local public schools.

This was one of several highlights as the Supreme Court listened to arguments in the South Carolina, Virginia, Kansas and District of Columbia cases.

The question in these cases, as well as in the Delaware case, is whether segregation in itself is unconstitutional.

FULL WEIGHT OF GOVERNMENT

The day also was highlighted by the argument of Assistant Attorney General J. Lee Rankin, who appeared as a "friend of the court" and threw the full weight of the Federal Government against the validity of segregated public schools.

Mr. Rankin told the Court that the states cannot maintain race segregation in public schools under the Fourteenth Amendment.

In another development, the Court wanted to know whether the Kansas case had become moot since it was originally argued a year ago.

TOPEKA ACTION

The Topeka Board of Education voted Sept. 3 to end segregation in the elementary schools "as rapidly as is practicable."

A few days later nine colored children were assigned to the Randolph and Southwest Schools, two of eighteen white elementary schools in Topeka. One of the petitioners in the Kansas case was among the colored children shifted from segregated to unsegregated schools.

As soon as Robert L. Carter, a member of the Legal Staff of the NAACP, began argument of the Kansas case, Justice Felix Frankfurter asked him whether the case was moot.

"I had hoped to get a little further than that," Carter said.

The NAACP takes the position that the case is not moot, he replied, because under the plan of the Topeka School Board only two schools have been integrated.

The separate brief filed by the Topeka School Board, he said, gives no indication of how long it will take before all colored children will be able to go to integrated schools.

CITES KANSAS STATUTE

Carter added that the NAACP also feels the case is not moot because there is involved the Kansas statute which permits cities of over 150,000 population to maintain segregated schools.

Justice Frankfurter asked whether the Topeka School Board was represented by counsel. He said he understood the state takes a different view of the case than the Topeka School Board, which was named defendants in the case.

Carter replied that the Topeka School Board has no intention of appearing. He agreed with Justice Frankfurter that the Topeka School Board might intend to not contest the case.

"That is what I call a moot case," remarked Justice Frankfurter.

"Do I understand the parties you represent have been admitted to mixed schools?" asked Justice Robert H. Jackson.

Carter replied that one of the minor appellants had been admitted, but the others were saill attending the four segregated schools are maintained in Topeka for colored children.

Frankfurter asked whether, "by the authorized pronouncement of the appellees," the other minor appellants would be admitted and whether the Topeka School Board contested the position of the NAACP.

"That is true," Carter replied.

"But Kansas does not contest it?" asked Justice Frankfurter, pointing out that Kansas was not a party to the suit and that its appearance to defend the Kansas suit did not give the Supreme Court jurisdiction.

"You do not question the good faith of the Topeka Board of Education? asked Frankfurter.

"I certainly don't" replied Carter. The NAACP attorney said he had "some serious questions" with respect to the plan of the Topeka School Board for integrating schools, but he did not know whether the Supreme Court was the proper forum to raise them.

FRANKFURTER'S VIEWS

Frankfurter told Carter he did not wish to shut off his argument, but, as he understood the situation, the Topeka School Board admitted his claim and he did not question the proposal but the question was whether the "concession" would be appropriately carried out.

Frankfurter suggested that the Supreme Court right to remand the case to the district court to enter a decree.

"I am sure you must feel it is a welcome thing if boards of education accede to your wishes and decide not to oppose desegregatin," said Frankfurter. "You just want to be sure they will carry it out. Is that right?"

"That is right," Carter replied.

Under questioning by Justice Stanley F. Reed, Carter said the state had intervened in the district court to defend the constitutionality of the Kansas statute.

But Frankfurter disagreed with Carter that the state had "appeared" in the Supreme Court last year. "We had to bring them in," said Frankfurter. "They were not so anxious. They did not claim they had a great right they had to defend here. "Perhaps cajoled is the better word."

Carter decided to give way to Paul E. Wilson, attorney general for Kansas, who said it was his view that the constitutionality of the Kansas statute was still at issue and insisted the case was not moot.

OFFICIAL POSITION

The U. S. Government told the Supreme Court yesterday that the high tribunal has a "responsibility" to determine whether the Constitution forbids racial segregation in public schools.

Assistant Attorney General J Lee Rankin maintained that there is "no conclusive proof" that Congress ever intended to sanction separate schools for Negro and white children

Rankin presented the Government's case as a "friend of the court" in the historic battle to decide the fate of the separate school system mandatory in 17 states and the District of Columbia and covered by local option laws in four other states.

Earlier, Virginia Attorney General J. Lindsay Almond and his associate counsel, T. Justin Moore, urged the court to exercise "judicial restraint" and leave the explosive problem to the states for an eventual solution.

Rankin was sharply questioned by Associate Justice Robert H. Jackson, who asked whether "our Representative institutions have failed," because neither Congress nor the courts have enforced integrated school systems.

The Assistant Attorney General replied: "In our view, both of you have a responsibility and neither can give up that responsibility to the other."

"CONFLICTING" EVIDENCE

Rankin declared that since there is "conflicting" evidence as to the intent of Congress toward segregation when it enacted the 14th Amendment to the Constitution in 1866, the court must decide the issue.

The Justice Department official addressed the high bench after Thurgood Marshall, representing the NAACP, insisted that "two-thirds of the Negroes in the United States are compelled to submit" to segregated education.

Marshall said he interprets statements by U. S. Selective Service chiefs to mean that America may lose a war unless the question of racial discrimination is solved.

The attorney demanded that the court not only order integrated schools but stipulate that the transition must be accomplished within one year.

Arguments in the segregation cases which specifically involve five states and the District of Columbia are expected to be concluded today. But there is little possibility that the court will rule until some time next year.

South Carolina, Kansas say—

14th Amendment does not ban segregation in public schools

WASHINGTON, Dec. 1—(AP)—Kansas and South Carolina contended to the Supreme Court yesterday that the federal courts lack power to outlaw racial segregation in the public schools.

Both states filed briefs preliminary to oral arguments before the high tribunal next week of a series of cases attacking segregation of Negro and white pupils.

Pending before the court are cases from Virginia, Delaware, Kansas, South Carolina and the District of Columbia.

The cases attack segregation on the grounds that it violates the 14th Amendment.

South Carolina and Kansas argued on the other hand that the 14th Amendment was not intended to end segregation.

THE KANSAS BRIEF said it was the intent of the framers of the 14th Amendment that the management of public schools should be left to the state Legislatures.

"The federal judiciary may not now assume jurisdiction over this phase of state activities in disregard of the framers' intent," the brief said.

"The people of Kansas, through the normal processes of local government, are demonstrating their willingness and capacity to deal with local race problems in a manner most beneficial to all concerned.

"Federal interference is neither necessary nor justified."

The Kansas brief defended specifically the validity of a state law which permits local school boards to provide for racial segregation through junior high schools and, in the case of Kansas City, Kan., through high school.

South Carolina's brief declared: "The overwhelming preponderance of the evidence demonstrates that the Congress which submitted and the state legislatures which ratified the 14th Amendment did not contemplate and did not understand that it would abolish segregation in public schools."

The amendment was adopted after the Civil War. It provides that no state may deny any person equal protection of the laws, nor abridge the privileges and immunities of citizens.

The cases attacking school segregation contend that segregation violates the 14th Amendment.

SOUTH CAROLINA said in its brief that it was not the understanding of the framers of the 14th Amendment that future Congresses might abolish segregation under its terms.

The brief said counsel for South Carolina Negro parents, in challenging segregation, were basing their arguments on certain fundamental fallacies.

One, the brief said, is "the fallacy that the anti-slavery crusade was directed against segregation in schools, whereas the fact is that its thrust was against the institution of slavery."

THE BRIEF CONTINUED:

"The problem before this court is not the legal or moral justification for slavery; rather the issue to be resolved is whether the people of the State of South Carolina may, in the exercise of their judgment based on first hand knowledge of local conditions, decide that the state objective of free public education is best served by a system consisting of separate schools for white and colored children."

BUT THEY WILL NOT WORK:

Private school systems advocated by racists

By LOUIS LAUTIER
For the NNPA News Service

WASHINGTON (NNPA) — Various threats have been made as to what will happen if the Supreme Court should outlaw racial segregation in the public schools.

One of the "bugaboos" is the Talmadge - Byrnes proposal to do away with the public school systems of their states and subsidize the education of each child. Under this proposal, the state would lease public school properties to individuals and private organizations for educational purposes.

The state and local school districts supposedly would provide funds for maintenance and operation of such schools.

Private School Obstacles

Aside from the question of the legality of appropriating public tax monies to carry on private school systems, there are too many obstacles in the way of making such a program work.

School standards in southern states are now below the level of standards in other sections of the country where there are no dual school systems. The South has more than its share of unhoused school children and poorly housed schools. Its lack of classroom space is greater and its teachers are more inadequately paid.

The states, which have dual school systems, are at the bottom of the economic ladder. Statistics show that a higher rate of their income is now being spent for school purposes than is being spent in the wealthier states, which have the better schools.

Get Federal Funds

More than a billion dollars of Federal funds are now being poured into the elementary and secondary schools of the nation. These funds are allocated so that the proportionately larger amounts are given to the financially less-able states.

In the fiscal year, 1951 — the first year Federal funds were provided for assistance in the maintenance and operation of schools in areas affected by Federal activities — some 1,180 school districts were determined to be eligible for sums totaling more than $30,100.

In the fiscal year, 1952, there were 1,765 eligible school districts entitled to $47,750,000; and, in 1952, 2,300 districts were expected to be entitled to $60,500,000.

Appropriated $74,500,000

Congress appropriated the sum of $74,500,000 and provided for contract authorization for an additional $25,000,000 to assist in the construction of minimum school facilities in areas affected by Federal activities during the 1950-51 school year.

For the year, 1951-52, Federal funds totaling $26,273,383 were allotted to the states for vocational education of less than college grade, in 1951-52. Of that sum, for example, South Carolina received $490,370 and Virginia, $608,780.

Federal funds allotted to the states for carrying on the school lunch program, in the five-year program, in the five-year period from 1946 to 1951, totaled $315,147,156. In addition to the allotment of funds, surplus foods acquired under price support and surplus removal operations, as well as foods purchased specifically for the school lunch program by the Federal Government in the same period totaled $181,966,055.

Will Lose Federal Funds

If the public school systems, in southern states, are changed over to private schools to maintain racial segregation, the states making the change will lose their share of all these Federal funds.

The question which Governors Herman Talmadge of Georgia and James F. Byrnes of South Carolina raise for their constituencies is — "where are the monies coming from to replace the loss of Federal funds if and when the public school systems of their states are changed over to private school system?"

Attorneys for the NAACP, in their comprehensive brief, take notice of the threats that have been made.

NAACP Brief

"It has been bruited about that certain of the states involved in this litigation will cease to support and perhaps even abolish their public school systems, if segregation is outlawed," says the NAACP brief.

"We submit that such action is not permissible... Any such reckless threats cannot be relevant to a consideration of effective 'gradual adjustment;' they are based upon opposition to desegregation in any way, at any time."

"Finally, there are hints and forbodings of trouble to come, ranging from hostility and deterioriated relations to actual violence... Obviously this Court will not be deterred by threats of unlawful action."

High Court Accepts D. C. Role in Dual School Case

Korman Speaks For Board; 3 Days of Argument End On Integration Issue

By Frank R. Kent, Jr.
Post Reporter

The fate of the dual school system of the District of Columbia now rests in the hands of the nine Justices of the Supreme Court.

The three days of reargument requested for guidance by the Justices in the five cases challenging segregation in public schools in the District, Virginia, South Carolina, Kansas and Delaware ended at 2:43 p. m. yesterday.

Before the arguments ended the Supreme Court Justices had quietly accepted the statement by Milton D. Korman, Assistant Corporation Counsel for the District, that the Board of Education wanted him to represent it. They also were told by Korman that only Congress could end segregation in the District's public schools.

Tuesday, Justice Felix Frankfurter questioned whether Korman and the Corporation Counsel's brief actually represented the District Board of Education. Justice Hugo L. Black asked Korman to tell the Court yesterday morning whether the Board wanted him to defend the case.

Korman cited laws of the District defining the duties of the Corporation Counsel's office, letters from the Board of Education concerning the denial of applications by Negro children to Sousa Junior High School, and from the Commissioners to the effect that the Corporation Counsel was to represent the Board. He added that C. Melvin Sharpe, president of the board, had telephoned him yesterday morning and assured him that members were 100 percent in favor of having the Corporation Counsel represent them.

Black said he had made his request Tuesday because he had gathered the impression a majority of the Board wanted to change the segregation regulations, and if that were so, he did not think the Court was called upon to decide the case.

Korman replied: "I do not understand that a majority wants to change the rules. Our position as legal advisors to the board is that they can't change the rules because the acts of Congress direct separate schools."

Korman argued that as far as the District was concerned it was apparent from history that Congress wanted to give equal rights to the Negro but at the same time intended to establish a separate school system.

He told the Court that just as he had appeared last May to defend the so-called "lost statutes" of 1872 and 1873 in the Thompson restaurant segregation case, so he appeared yesterday to defend the validity of statutes enacted by Congress to maintain a system of separate schools in the District.

Korman said that in May, 1862, Congress adopted a law to tax Negroes in what then was Washington County to promote a "full and equal," and he emphasized the phrase, system of instruction. The next day, May 22, he said Congress acted to establish an educational system for Negroes in the cities of Washington and Georgetown. Korman said the dual system of the District apparently stemmed from the actions. Simultaneously with these actions, he continued, Congress struck down the Black Codes.

In 1871, Korman noted, a Legislative Assembly for the District was created and Washington County and the Cities of Washington and Georgetown were combined into the District of Columbia. The assembly adopted the "lost statutes" but did not legislate on schools. "They couldn't," said Korman.

He argued that the whole legislative history of Congress concerning the District since the Civil War shows an uninterrupted intent to maintain a dual school system.

The District case involves the "due process" clause of the Fifth Amendment because of Washington's Federal status under Congress. The cases from the four States focus on the Fourteenth Amendment.

James M. Nabrit, Jr. who teamed with George E. C. Hayes in representing the Negro parents in the District case, argued that if Congress intended segregation in the District, it would have made it mandatory.

"They can look in these statutes in vain for any penalty or disability for mixing Negroes with whites in public schools," he declared. Nabrit said that of 11 basic District school statutes, 9 were enacted between 1862 and 1866 when the nation either was on the verge or in the midst of civil war. In addition, public education was in such a rudimentary stage it could not be dignified by that name, Nabrit declared.

Nabrit took cognizance of a question asked Korman by Chief Justice Earl Warren, concerning the fact that the District Court appoints the members of the Board of Education. Korman said there was no tie between the Court and the Board. He said records showed the court had dealt severely with the board when circumstances warranted.

Nabrit said he did not question the fact that the District Court judges were incorruptible. He said there did appear to be an impropriety in the fact that the Court appointed the Board and then ruled on suits brought against the actions of that agency.

He told the Court that President Truman and his Attorney General, James P. McGranery, and President Eisenhower and his Attorney General, Herbert Brownell, jr., have declared that the District statutes neither compelled nor authorized segregation and that segregation is unlawful in the District.

Korman said he did not recommend any definite time limit in which a transition from segregation to integration should be accomplished in the District. He pointed to administrative difficulties and urged a period of indoctrination and training for teachers.

Nabrit told the Court he felt segregation should end at the beginning of the school term immediately following the ruling of the court, if it should outlaw the dual system. He said this should be done even if the Court ruled as late as June. He said 80 percent of the teachers in the District have served or are serving on integrated committees and about 200 already have been trained for integration.

Nabrit wound up his argument thus:

"America is a great country where we can come before this Court and express to the Court our deep concern which we have where the Government is dealing with us. We are not in the position expressed in George Orwell's satirical novel, "Animal Farm," in which, after a revolution by the animals and a dictatorship has been set up and a sign put on the barn, 'All animals are equal,' that sign is changed to, 'But some animals are more equal than others.'

"Under this Constitution and under the protection of this court, we believe that we, too, are equal."

The Court had allotted a total of 11 hours for arguments on the intent of Congress concerning the Fourteenth Amendment and methods of transition should segregation be outlawed. It first had heard arguments last December and in June asked for study and discussion of these subjects.

Of the 11 hours, 5 were allotted to each side and one to the Department of Justice which had filed a brief as a friend of the Court. The arguments actually consumed a total of 8 hours, 47 minutes. Part of this timesaving was due to the cutting short of arguments on the Delaware case.

In this case the Supreme Court of the state has ruled that several Negro pupils may attend white schools because equal facilities were not provided for them. The state is petitioning the High Court to reverse this ruling and grant sufficient time to provide the equal facilities.

H. Albert Young, Attorney General for Delaware, told the Court the problem obviously was a legislative and not a judicial one. Just before the lunch recess at 2 p. m. Jack Greenberg, attorney for the Negro children, said the goal was to keep the children permanently in the white schools and to have segregation in the state declared unlawful.

After the recess, Thurgood Marshall, attorney for the National Association for the Advancement of Colored People, which filed a consolidated brief for the plaintiffs in the four state cases, said it had been decided to cut short the argument.

With the end of arguments, the nine Justices now are faced with the weighty decision of whether or not segregation in public schools is in itself unconstitutional or whether the doctrine of separate, but equal, facilities enunciated by the court in a transportation segregation case in 1896 should remain the criterion.

Actually, the court will be ruling in five specific instances. This fact was brought up forcefully by Justice Robert H. Jackson on Tuesday. He also was concerned about the criteria to guide the Justices in handing down decrees to the lower courts should they rule against segregation in the five cases. He said if there were no criteria he foresaw a "generation of litigation."

There is little doubt in legal circles, that whatever decision the court may reach, it will have an ultimate and momentous impact on the 17 states in which segregation is mandatory and in the District of Columbia. It is expected that the decision will not be forthcoming for several months, possibly not before June.

McGranery Cited on Segregation

WASHINGTON —(AP)— The Eisenhower administration called upon the Supreme court Tuesday to outlaw racial segregation in America's public schools.

It went straight down the line with the Truman administration in declaring that separate schools for Negro children, even if they are equal to those for White pupils, are illegal under the constitution.

But Virginia's attorney general, J. Lindsay Almond, told the high tribunal that it was being asked to make "a decision contrary to the spirit and intent and purpose of the 14th amendment."

The amendment provides that no state shall deprive any citizen of due process of law or deny him equal protection under the laws.

Assistant Atty. Gen. J. Lee Rankin had told the nine justices they have "the power and the duty" to rule that segregation violates the 14th amendment.

Rankin said the Justice Department has accepted the arguments of James P. McGranery, the last attorney general in the Truman administration, who told the court a year ago that "segregation imposed or supported by law" in itself is unconstitutional.

The assistant attorney general went to bat against segregation midway in three days of momentous debate on the issue in the Supreme court chamber.

Prolong Dixie's School Jitters

WASHINGTON, D. C.—The inability of the United States Supreme court to reach a decision on the Constitutionality of public school segregation will keep the South in a dither for several months.

As the Richmond Times Dispatch put it:

"This means that the nation in general, and the South in particular, will be kept on tenterhooks over this matter for at least another six months or so, and the school session of 1953-54 will open in September without a decision."

The Supreme court announced June 8 that final action on the five school segregation cases will be delayed until lawyers for both sides reargue the issue beginning Oct. 12.

FIVE QUESTIONS

Five specific questions were presented by the court around which the new arguments will center. These questions are detailed in another story on page 12.

The Supreme court invited Atty. Gen. [illegible] Herbert Brownell to take part in the oral arguments and to file an additional brief.

The states of Georgia and South Carolina have made legal arrangements to turn schools over to private authorities to maintain segregation in case of a decision unfavorable to them.

Other Southern states have considered this possibility.

All have started a full-steam-ahead building program in an effort to "equalize" Negro and white schools, hoping the court will rule that "separate but equal" schools are constitutional.

Following the June 8 announcement of the Supreme court, many state officials said these construction plans will continue despite the tribunal's failure to reach a decision at the time it was expected.

Speculation continues as to the final outcome of the momentous issue. Many Southern white politicians and civic leaders have expressed the opinion that the "separate but equal" doctrine will be upheld.

Negro leaders, on the other hand, feel that the dual school system will be wiped out by the Supreme court.

They say, however, that this will not mean an immediate integration of all public schools. Residential segregation will play an important role in keeping many schools segregated, they point out.

In practically every Southern city — as in many Northern communities, Negroes and whites live separately, for the most part. Should Jim Crow schools be outlawed, observers say, schools already in Negro districts will remain all-Negro by geography though not by law.

ACROSS TOWN

However, in school districts in which Negroes and whites live, Negro pupils will no longer have to travel across town in order to attend school, they predict.

Another area which is not touched by the pending cases is that of teacher assignment. Little has been said about the integration of Negro and white teachers in the event of a ruling which would "mix" the South's schools.

Many white parents have said they will pull their children out of school before they allow Negroes to teach them.

The Board of Directors of the NAACP, which has sponsored the suits against school segregation, expressed "regret" over the inability of the Supreme court to reach a "favorable decision at this time."

The board pledged the association's continued "historic fight against segregation."

"We are convinced that racial segregation is not only illegal; it is also immoral," the board said. "The NAACP is further convinced that the American people are ready for the total abolition of this archaic system of racial segregation.

School Bias Ruling Put Off to Fall

By Don Irwin

WASHINGTON, June 8. — The Supreme Court deferred decision today until next fall at least on the controversial question of racial segregation in public schools, but upheld an eighty-year-old law barring discrimination against Negroes in District of Columbia restaurants.

The high court ordered reargument on Oct. 12 of five allied cases dealing with school segregation and outlined in a detailed order the Constitutional and procedural questions it wants reviewed. The reargument would supplement discussions heard by the court for three days in December.

In its 8-0 decision of the restaurant case, the court asserted the enforceability of a law requiring restaurants to serve all "well-behaved and respectable" persons, regardless of color, passed in 1873 by the District's old legislative assembly. Aside from its bearing on the issue of home rule, the decision did not appear to apply outside the District, where some restaurants customarily bar Negroes.

Lower Courts Disagreed

The case reached the court after lower courts disagreed on the validity of a five-count criminal information brought by the District government against the John R. Thompson Co., Inc., restaurant chain after one of its branches refused service to a group of Negroes in July, 1950. The court's decision, by Associate Justice William O. Douglas, held the 1873 law valid, though the Legislative Assembly was abolished in 1874. It referred back to the United States Court of Appeals for the District the question of whether a similar law passed by the Assembly in 1872 also bears on the case.

The school segregation cases reached the court on appeals from segregation laws in the District of Columbia, South Carolina, Virginia, Delaware and Kansas. In these and thirteen other Southern and border states, segregation is required at one or more levels of the school system. It is permitted in three more states.

The basic issue stressed in December's arguments is whether "separate but equal" school facilities for Negroes conflict with the Fourteenth Amendment of the Constitution. It forbids any state to "abridge the privileges or immunities of citizens" or deny any person "the equal protection of the laws."

Intent and Scope

In ordering reargument, the Supreme Court left the clear inference that it is concerned with the intent and scope of the amendmnet. It directed counsel to emphasize in briefs and oral discussions the following points:

1. What evidence is there that the thirty-ninth Congress which approved the amendment in 1866 and the state legislatures and conventions that ratified it "contemplated or did not contemplate, understood or did not understand, that it would abolish segregation in public schools?"

2. If neither Congress nor the states understood that compliance "would require the immediate abolition of segregation," did the framers of the amendment understand that:

(A) Future Congresses might abolish segregation under Section 5 of the amendment, permitting legislation to enforce the amendment, or

(B) That it would be within the judicial power so to construe the amendment "of its own force?"

Issue of Judicial Power

3. If answers to the second question do not dispose of the issue, "is it within the judicial power, in construing the amendment, to abolish segregation in public schools?"

4. Assuming it is decided segregation violates the amendment:

(A) Would a decree necessarily follow that, within the limits of school districting, "Negro children should forthwith be admitted to schools of their own choice," or

(B) May the Supreme Court permit a gradual adjustment to non-segregated systems?

5. On the assumptions on which Question 4 was based, should the court:

(A) Formulate detailed decrees, and on what specific issues;

(B) Appoint a special master to hear evidence with a view to recommending specific terms for such decrees, or

(C) Remand the question to the courts of first instance with directions to frame decrees, and if so, what should be the form of the directions and procedures?

Brownell Invited

The court invited Attorney General Herbert Brownell jr. to take part in oral arguments and file an additional brief if he so desires. Some of the nation's ablest constitutional lawyers representing the affected states and the National Association for the Advancement of Colored People, handled the argument in December.

Mr. Brownell praised the decision in the Thompson case tonight as "a significant step toward accomplishment of President Eisenhower's anti-segregation program." He said he welcomed the invitation for "the United States . . . to file an additional brief" in the school segregation cases.

As an aftermath of that proceeding, officials in a number of Southern states discussed devices for continuance of segregated schools, including the transfer of white public schools to "private" ownership.

It is felt there is a strong possibility that a decision will be delayed for some weeks after the reargument, possibly until early 1954.

South Urged To Prepare For Ruling

Segregation To Be Held Invalid, Thinks Georgia Senator

6-20-53

WASHINGTON, D. C. — (NNPA)—Senator Walter F. George, Democrat, of Georgia, expressed the opinion last Wednesday that the United States Supreme Court, in ordering the five school segregation cases reargued next October 12 on specific questions, indicated that it will outlaw segregation in public elementary and high schools.

His view was based on questions which the Supreme Court did not direct lawyers in the cases to argue at the rehearing, rather than the specific questions to which it asked them to address themselves.

* * *

SENATOR GEORGE, who is regarded as one of the foremost constitutional lawyers in the Senate, said it was significant that the court asked for no further arguments on the dual form of state and federal governments formed under the Constitution.

"This to my mind is the basic issue in the case," George said. "Yet the court in proposing a series of questions on which it wanted to hear further arguments before rendering a decision did not request any additional discussion of our dual system of government.

* * *

"IT WOULD INDICATE to me that a majority of the court thinks the states have no rights under the Fourteenth Amend-

ment to order segregation in their public schools. Consequently, I anticipate that the system long participated in the South of separating the two races in different schools will be held to be discriminatory and therefore unconstitutional, as a majority of the present court sees it."

* * *

SENATOR GEORGE said the South might as well prepare itself for such a decision.

Under Senator George's concept of the dual form of government, all rights not delegated to the Federal Government are reserved to the States with strict limitation of the powers of the Federal Government.

"Why should the states continue to exist if they can't regulate their domestic and internal affairs?" asked George.

* * *

THE FIVE QUESTIONS the Supreme Court asked the lawyers to discuss on reargument of the cases relate to whether it was intended or understood that the Fourteenth Amendment would abolish segregation in public schools, whether the court has the power to abolish segregation under that amendment, and the type of decree it should enter if it should outlaw segregation.

George thought these questions were significant.

"The court," he said, "seemed to be concerned about how it should put into effect a segregation order, if one is issued. The emphasis thus raised on this phase of the matter may be indicative.

"EVIDENTLY THERE IS some division in the court or the basic issues involved or else the further hearings would not have been ordered.

"But the tenor of the court's action, and especially its failure to propound any question on our dual form of government, warrants the assumption that a majority of the tribunal has made up its mind as to this phase. That, in turn, points to an anti-segregation decision."

Court Delays Test On Segregation

WASHINGTON, Aug. 4 (INS).—The Supreme Court today granted the Government an eight-week postponement in the reargurments that had been set for Oct. 12 on five suits seeking to abolish segregation in public schools.

The high court will hear the reargurments on Dec. 7 instead, putting off still further a decision in the bitterly controversial case.

Attorney General Herbert Brownell, Jr., requested the postponement saying the Government needed more time to prepare its brief. Chief Justice Fred M. Vinson granted the delay. The five cases involve the District of Columbia, Kansas, Virginia, Delaware and South Carolina.

Administration Expected to Fight School Segregation in High Court

By W. H. LAWRENCE

Special to THE NEW YORK TIMES.

WASHINGTON, Nov. 8—A high Eisenhower Administration source said today that it was a reasonably safe assumption that the Department of Justice would oppose in the Supreme Court segregation by color in the public schools.

There are five major cases attacking segregation now before the high court, which has requested the Government's views in reargurments, which will be heard one month from yesterday.

This brought the Federal Government directly into the cases.

An official, familiar with the legal study being given these cases under the direction of Herbert Brownell Jr., Attorney General, said that he had never heard it suggested that the Administration would support segregation.

This decision is likely to have important political as well as legal repercussions because the question of separate schools for Negro and white children is a very explosive issue throughout the South. To the average white Southerner, the question of requiring his children to sit side by side with Negroes is much more important that the Democratic party and will, to a large degree, undermine the gains the Republicans have been making in the South. There now is a determined Republican effort to consolidate those gains and make possible an effective two-party system in the South, which, with few exceptions, has voted solidly Democratic since the Civil War.

The Democratic leaders contend that should the Eisenhower Administration take a stand against school segregation there would be less reason for the Southerners to bolt their party because of the civil rights issue.

The Eisenhower Administration was brought into the school segregation question shortly after it took office because the Supreme Court apparently was unable to decide cases that had been brought before it before the Republicans came back into national power.

Fourteenth Amendment Cited

If the court had been able to decide these cases on the basis of the arguments heard originally last December—one month before President Eisenhower's inauguration—it would not have been necessary for the Eisenhower Administration to face these ticklish legal and political questions.

The cases attacking the legality of separate schools for Negroes and whites were brought under provisions of the Fourteenth Amendment, adopted in Reconstruction days, which provides that no state may make or enforce any law abridging the privilege or immunities of any citizen, depriving any person of life, liberty or property without due process, or in any way denying any person the equal protection of the laws.

Just before adjournment last June, the Supreme court posed five major questions to counsel on both sides of the segregation issue and invited the Attorney General's views on behalf of the Federal Government. With the reargument only about a month away, the Justice Department hopes to complete its answers within the next two or three weeks so the court and interested parties may have its views in advance of the second hearing.

Questions Asked of Department

In general terms the legal questions to which the Attorney General's staff is preparing answers, are:

¶What evidence, if any, is there that Congress or the state Legislatures or conventions that ratified the Fourteenth Amendment understood that it might or might not abolish segregation?

¶If the Congress and the state Legislatures did not understand that compliance with the Fourteenth Amendment required immediate abolition of segregation was it the understanding of those who wrote the amendment that future Congresses might abolish segregation or that it would be within the power of the judiciary to construe the amendment by itself as abolishing segregation?

¶Is it within the judicial power to abolish segregation?

¶If so must a decree necessarily be ordered immediately admitting Negroes to schools of their own choice in their own geographical school districts or is it possible for the court to permit a gradual adjustment from existing segregated systems to a system not based on color distinctions?

¶If the court decides that segregation is unconstitutional should the court hand down its own detailed decree or should it appoint a special master to decide the issue or should it send it back to the lower courts to fix the exact details of the changeover?

The Attorney General also has been invited to argue the case as well as to answer the questions the court has put to him so as to make clear the Administration's position.

him and the Democratic party in 1948 and again in 1952.

However, the Truman Administration never argued the school segregation issue before the high court, nor did it have the opportunity to take a position there formally in the matter.

President Eisenhower, an advocate of "gradualism" or a gradual solution of the problems, in dealing with civil rights issues, was able during the 1952 Presidential election to crack the "Solid South." He carried Virginia, Florida, Texas and Tennessee, and came close to victory in South Carolina and Kentucky.

Some Democratic leaders believe that if the Eisenhower Administration opposes segregation it will remove many of the causes for North-South tension within the problem of Negro and white adults working side by side under provisions of a proposed Fair Employment Practices Commission.

It was President Truman's persistent advocacy of F. E. P. C. and other civil rights legislation that caused the Southern revolt against

Argue for segregation—Lawyers who argued for continuation of segregation before the United States Supreme Court yesterday pose after the day's court session. Left to right: J. Lindsay Almond, Virginia attorney general; John W. Davis of New York, representing South Carolina, and T. Justin Moore of Richmond, Va. (AP wirephoto.)

Segregation state problem, top court told

BY KAP'
W.
(AP)—Virg.
Supreme Co...
"judicial restrain... and leave the question of segregated public schools to the states for solution.

Atty. T. Justin Moore and J. Lindsay Almond Jr., Virginia's attorney general, argued that the high court should take no action to strike down dual school systems.

Moore, the first speaker when legal arguments resumed today on the legality of segregated schools, contended that the 14th Amendment, adopted after the Civil War, never was intended to outlaw separate school systems for Negroes and whites.

Moore said Northern radicals" made many efforts, all of them unsuccessful, to make the amendment ban separate school systems.

He said they also made many unsuccessful efforts to put through Congress legislation giving Negroes equal status as to schools, cemeteries, theaters, "and what not."

Within a month after the 14th Amendment was proposed, Moore told the justices, Congress set up separate school systems in the District of Columbia for white and Negro pupils.

AND, HE WENT ON, seven states—New York, New Jersey, California, Illinois, Missouri, Ohio and Pennsylvania — which had segregated schools at the time the amendment was adopted continued them for years thereafter.

Almond, displaying more oratorical flourish than previous attorneys, told the court that the attorneys opposing segregation "are asking you to amend the Constitution of the United States and go further than Congress intended you should go."

Almond, his voice alternately rising and falling, said the other side was asking the court to disturb the "unfolding evolutionary process of education" under which he said "the colored man has risen."

Today's crowd at the court was only about half as large as yesterday's.

THE DEBATE, with Moore as today's lead-off man, revolves around the question whether the 14th Amedment to the Constitution, adopted after the Civil War, gives the Supreme Court the power now to order children educated together in public schools regardless of race.

One round of pro and con debate on public school segregation, at times charged with emotion, was heard yesterday. The clashing arguments wind up tomorrow but the court's decision on the momentuous issue may be months off.

Legal questions for the court to decide are: Does the "separate but equal" doctrine it laid down in an 1896 transportation case still apply? Has the court the power to order states to integrate their segregated school systems? Did the 14th amendment contemplate outlawing segregation?

Negro attorneys, opening the arguments yesterday, asked the high court to outlaw segregation, contending the "separate but equal" doctrine cannot apply.

White-haired John W. Davis, speaking for South Carolina and Virginia replied that the doctrine has been approved in the courts and the legislatures for so many years that it should be regarded as no longer open to debate.

T. JUSTIN MOORE of Richmond, also speaking for Virginia, told the court laws passed by Congress immediately after the Civil War did not provide that attending public schools as is a civil right.

Moore, who spoke out briefly before the court adjourned for the day, was in line to open today's session.

Following him, the U. S. government, through Asst. Atty. Gen. L. Lee Rankin, will tell the court it has the power to outlaw segregation. The government is not urging outright that the court abolish segregation, but contends the court has that power and that the purpose of the 14th Amendment was "to secure for Negroes full and complete equality and to abolish all legal distinctions based on race or color."

Still awaiting argument are segregation cases involving the District of Columbia, Delaware and Kansas.

There are 17 states with compulsory public school segregation and three which permit it. All of them presumably would be affected by a decision against segregation.

Moore said 10½ million of the 15 million Negroes in the United States live in areas where compulsory segregation is the rule.

In answer to a question from the bench as to what should be done if integration were ordered, he said, "the parties should certainly be allowed to present a plan rather than have the court hand down a plan."

THERE HAS BEEN discussion of ways by which a gradual changeover to integrated schools might be accomplished if segregation were banned.

Some officials in Southern states have spoken of relinquishing public education to a system of private schools if segregation were outlawed in state systems.

The 80-year-old Davis, 1924 Democratic nominee for president, seemed on the verge of tears as he wound up an hour's argument against striking down segregation.

The segregation ruling

By Doris Fleeson

WASHINGTON—The Supreme Court did not convene to hear the segregation cases until its usual hour of noon on Monday, but people were lining up before dawn in the hope of securing one of the 200 seats in the courtroom. Most of them were Negroes eager to share a climatic moment in the struggle of their race to achieve full equality.

Negroes realize, perhaps more than do most Americans, that they have made their greatest gains in the U. S. through court action. As the Negro's economic status improved with the country's general prosperity, he has pressed steadily onward and upward through the courts. Rarely in this generation have they been rebuffed by judges obliged to test their arguments against constitutional guarantees rather than against public heat and pressure.

This week the high court hears the arguments for and against segregation, the issue accepted by Negro leaders at least as the symbol of their citizenship rights. Perhaps those leaders exaggerate. But it is equally possible that such Southern white leaders as James F. Byrnes of South Carolina exaggerate white resistance to a possible Supreme Court order when it has been fairly won by due process of law.

IN ANY CASE, both sides have warned of another almost irrepressible conflict. The Negroes say that 13,000,000 Negroes will be unhappy if segregation in any form gets Supreme Court approval. The Southern leaders threaten to close their public schools, the foundation stone of American democracy, if segregation is barred.

This is the issue politicians duck, usually under cover of arguments about cloture rules. The court has no such privileged sanctuary. The cases have reached it and it is listening.

That the nine judges are thoroughly mindful of segregation's explosive possibilities was proved last Spring when it asked for the present arguments. There would be a change of administration, they knew, and they wanted the new president and his people to understand the issue and give the court the benefit of their views. After all, theirs will be the executive responsibility.

Perhaps more light will be shed on just what those views are when Assistant Atty. Gen. J. Lee Rankin speaks up later this week. Atty. Gen. Herbert Brownell's brief was a sidestep. He told the court it had the power to decide the case. He did not—in contrast to Atty. Gen. James P. McGranery for the Truman administration—tell them they ought to decide against segregation.

Even this did not please the Eisenhower Democrats of the South, including Gov. Byrnes. They are seriously embarrassed by the fact that a victory against segregation may be won in an Eisenhower administration after they had successfully staved it off during Democatic tenure.

WHICHEVER WAY the decision goes, it will have significant political repercussions. Since it affects the lives and traditions and deep emotions of so many people, it will also be one of the great social decisions of the era.

Nothing is more fruitless than to attempt to forecast a Supreme Court decision. Most of the men now on the court have had immediate and direct contact with the same pressures put upon Congress and state legislatures. Chief Justice Earl Warren, lately California's governor, understands better than most people all that is involved in matters affecting the social system. He is in no sense an extremist although a man of principle.

The question is often asked whether it is within the power of the court to set a timetable for the abolition of segregation. Legal authorities say yes. It is the solution many politicians hope for.—©

Brownell Says Court Should Kill Jim Crow

By ARTHUR KRANISH
(International News Service Staff Correspondent)

WASHINGTON—(INS)—The Eisenhower administration flatly told the Supreme Court Friday that it can and should outlaw racial segregation in public schools, but suggested a "one-year time limit" for the states to comply.

In a major policy decision, the administration declared that separate schools for white and Negro children should be wiped out as "unconstitutional."

Attorney General Herbert Brownell Jr. appealed for the court ruling in an 188-page brief which strongly set forth the administration's opposition to segregated schools.

Brownell declared the state courts should be ordered to abolish segregation "forthwith," but conceded that a "transition period" might be needed to concur with such a sweeping decision. He suggested a nominal limit of one year.

Segregated schools are operated in at least seventeen states—most of them in the South—and in the District of Columbia.

* * *

BROWNELL'S BRIEF was submitted at the court's request preliminary to the reopening of hearings Dec. 7 on five cases involving the explosive school segregation issue. The cases involve separate facilities in the District of Columbia, South Carolina, Virginia, Delaware and Kansas.

The Administration's move was viewed as a major policy decision and had immediate repercussions.

The brief declared that the court has the power to end segregation throughout the nation without specific congressional action.

The department declared that the "primary and pervasive" purpose of the Fourteenth Amendment to the Constitution was "to secure for Negroes full and complete equality before the law and to abolish all legal distinctions based on race or color."

Several Southern states have already taken steps to set up private school systems in the event the court rules that segregation is illegal in state-owned institutions.

Brownell took a broad view of the Fourteenth Amendment, which bars any state from making or enforcing any law that abridges the privileges and immunities granted under the constitution to citizens of the United States.

It was on the basis of this amendment that the Administration made its major political and constitutional decision to oppose segregation.

A SIMILAR view was taken by the Truman Arministration. Last June, however, the court asked questions which the Justice department answered on the Eisenhower Administration's behalf last week.

Brownell said that non-segregated school systems should be set up "as expeditiously as the circumstances permit," but he provided for an extension of time in special cases.

Brownell pointed out:

"There is no single formula or blueprint which can be uniformly applied in all areas where existing school segregation must be ended."

The Attorney General took note of the controversy centering around the school question by declaring: "Some Southern leaders have expressed the view that considerable popular opposition will be met in the execution of any program for integration of public schools.

"In their opinion, separation of the races in public schools is one of the ways of life in the South. They predict that popular antagonism to elimination of segregation in publis schools, arising from a traditional hostility to the mingling of the races, will most likely be reflected in withdrawal of state aid for those schools."

Such a threat has already been issued by the states of South Carolina and Georgia, which have announced their intentions of setting up a system of "subsidized" private schools.

* * *

BROWNELL, looking at the controversy both ways, said of this view: "On the other hand, the conviction has been expressed that these fears are exaggerated and unjustified, and that there is no reason to assume that once this court has authoritatively resolved the constitutional question the people of the entire country, including the South, will not abide by its decision."

Brownell then expressed his belief that it "would be futile and irrelevant to enter into such speculation." He explained, "Recent years have witnessed, on a fairly large scale, an ever increasing trend toward the elimination of racial segregation and discrimination in all fields and in every part of the country. In almost every instance, this progress has been accomplished without disorder or friction.

"Traditional attitudes on racial relations are in the process of constant revision, particularly in the South."

SUPREME COURT ATTORNEYS — These attorneys were among those admitted to appear before the Supreme Court recently on the explosive issue of segregation. Left to right: Lawrence R. Bailey, N.Y.; State Senator Robert L. Brokenburr, Indianapolis, Ind.; and Carl R. Johnson, Kansas City, Mo.

Ike vs. Segregation

THE Eisenhower Administration has spoken forthrightly and clearly to the Supreme Court regarding racial segregation in the public schools in general.

It is against segregation.

In arguing against the discrimination practiced in four states and the District of Columbia, the Administration pointed out that while Congress may not have had the schools particularly in mind when it passed the 14th amendment, it did intend to prohibit states from enforcing racial segregation.

(The 14th amendment prohibits any state from passing legislation that denies "to any person . . . the equal protection of the laws.")

Therefore, the Justice Department concluded, the Supreme Court has the power to declare segregation in the public schools unconstitutional, and should do so.

PUBLIC SCHOOLS

Segregation ruling to affect nine million school children

ATLANTA, May 17—(AP)—Nearly 9 million children in 16 states will be affected by the U. S. Supreme Court decision in the several cases seeking to outlaw segregation in public schools.

An Associated Press survey today showed there are about 8,959,000 students attending public schools in the 14 Southern states which segregate the white and Negro races in their education systems.

In addition, about 25,000 Negroes attend segregated schools in two fringe states, Missouri and Kansas.

PUBLIC SCHOOL segregation long has been under attack by the National Assn. for the Advancement of Colored People. Several lawsuits over the issue are before the Supreme Court, but legal authorities consider one from South Carolina the leading case.

It directly attacks the "separate but equal facilities" theory under which the Southern states have been operating, and which once was sanctioned by the Supreme Court.

The segregation suits were argued before the Supreme Court about six months ago, and a decision has been expected for some time. The court will hold another opinion session tomorrow.

The 14 states which segregate white and Negro public school students are South Carolina, North Carolina, Virginia, Mississippi, Louisiana, West Virginia, Texas, Arkansas, Oklahoma, Kentucky, Tennessee, Georgia, Alabama and Florida.

Figures collected for The Associated Press survey give 6,785,000 white and 2,173,000 Negro students in those states.

Texas, of course, has the greatest student body—1,633,911—of which only 13.34 per cent, or 218,000, are Negro.

West Virginia, with a total student body of about 440,567, has the smallest number of Negroes, 25,978, or 5.7 per cent.

Oklahoma and Kentucky also have small ratios of Negro students. In Oklahoma Negroes make up 7 per cent of the 510,000 total. In Kentucky it is 7.5 per cent of a 440,000 total.

IN MISSISSIPPI and South Carolina the division is almost equal. Negroes make up 48 per cent of Mississippi's 471,000 and 44 per cent of the 512,000 total in South Carolina.

District Affairs

Orderly End of Segregation at Stake

By Ben W. Gilbert

THE ISSUE OF SEGREGATION in the District of Columbia soon will occupy public attention again. Activity on this issue can be expected on at least four fronts.

GILBERT

The situation represents a challenge of the first rank to community leadership. How the city handles itself during the next few months will determine whether the transition to non-segregation of races in the Nation's Capital shall be orderly and relatively tension-free.

The Supreme Court has the next move in two areas. Before the high court is a case to test the constitutionality of racial segregation in the District schools and another designed to determine whether the "lost" laws of 1872 and 1873 are still valid.

A WIDE AREA OF CHOICE is available to the court on the school matter.

The court could determine that segregation in District public schools is constitutional—an unlikely verdict in the light of recent court decisions. It could state that segregation is unconstitutional and should be eliminated forthwith. Such a verdict also is unlikely, because the court probably will consider the effect of such an abrupt change on the orderly management of the school system and will wish to give the authorities some leeway.

A possible out would be a finding that segregation in the District schools is not required by the District Code. This would leave the School Board free to effect the transition to non-segregation in an orderly manner.

Another finding might be that the Constitution requires absolute equality of educational facilities at all times. Non-segregation then would have to be introduced to maintain equality of education between races.

Or there might be an order to eliminate segregation over a period of years, with the United States District Court supervising the transition. The District Court already has a large hand in school affairs by virtue of its role in appointing School Board members. There may be some reluctance to take this course, however, because of the feeling of some judges that the job of appointing School Board members is not rightfully theirs in the first place.

ENFORCEMENT of the "lost" laws of 1872 and 1873 will not present quite the same problem. These laws once prohibited racial segregation in restaurants, hotels, and other public places.

The laws cover an area where considerable progress has been made in the last few years.

If the laws are found to be enforceable, don't look for a rash of Municipal Court cases to contest them. Local businesses are unlikely to buck the laws en masse, although there may be some tensions and localized disturbances.

A third area of activity is on the swimming pool front. The Recreation Department swimming pool on the Rosedale Playground has been declared non-segregated, leaving the Georgetown playground pool the last segregated public pool in the city.

Tensions and some flareups accompanied the shift of Rosedale Playground to non-segregated use. Some adult leaders of citizen groups, who should have known better, have made noises which make it difficult to keep the pool's operation orderly.

There is also a possibility that the Georgetown pool will become the center of community agitation this summer.

THE FOURTH ACTION AREA on the segregation front lies between the District Building and the White House. The Federal Administration has the problem of carrying out President Eisenhower's pledge to end District segregation.

The District Commissioners have been urged to issue an order ending segregation in District government employment and in public facilities. Eventual issuance of such an order in ome form is considered likely. The question is largely one of timing.

Action here also should not be without elements of careful planning and quiet community preparation. Unfortunately, very little has been done to pave the way.

Desperately needed is some machinery for mobilizing thoughtful, foreward-looking citizens to make sure that any changes are effected on an orderly basis.

The absence of such civic leadership will levae the timing of segregation action up to the extremists on both sides of the issue, thereby creating a difficult police problem.

Virginia Affairs

Campaign Silent on School Segregation

By Benjamin Muse

IT NOW SEEMS PROBABLE that the Supreme Court will hand down the long-awaited decision on the question of race segregation in the public schools before the end of June.

The time fuse was lit in 1951 by the school cases in South Carolina and in Prince Edward County, Virginia. It burned more or less silently for two years, while Virginia elected a General Assembly, went through a presidential campaign and—as far as the public is concerned—almost forgot the segregation cases.

MUSE

The explosion, when it comes, may be comparable in significance to the Emancipation Proclamation. It may be much less than that, but still a serious matter for Virginia and every other Southern State. It may amount to a requirement that Negro school facilities be brought up to a level of equality with those for white children without delay. It is hardly conceivable that the decision will prove a dud.

THE CURRENT political campaigns in this State have brought no mention of this overshadowing problem. One of the two candidates for the Democratic nomination for Governor will probably have to wrestle with it, but neither has found a place for it among the commonplace items which make up his platform. It may be that the Supreme Court decision will fall into their laps like a hot potato a few weeks before the date of the primary election.

Among thoughtful people, nevertheless, and especially among responsible State officials, the matter is a source of anxious speculation and concern. It has never been absent for long from the thoughts of Governor Battle.

With less than eight months remaining of his term of office, Battle's hitherto relatively felicitous and untroubled administration has almost, but probably not quite, escaped the impact of the Great Decision.

IN THE EVENT the Supreme Court calls merely for equalization of school facilities, Virginia could go a long way toward accomplishing this with the 33 million dollars still left of the Battle school fund.

To withhold further grants for the construction of white schools and apply the balance exclusively to the construction of Negro schools would be an extremely unpopular operation, but it could be effected by General Assembly action.

The use of unexpended balances of some other capital outlay appropriations to meet the emergency also would be a possible, but similarly painful expedient. Recourse to a popular vote on a bond issue proposal in such a situation would be hazardous.

A Supreme Court decision ending segregation in the public schools is considered less likely, but still an awful possibility which cannot be overlooked.

IN THAT EVENT, Virginia will not abolish its public school system—as is apparently being considered in South Carolina. Such a proposal would have little serious support. Repeal of the compulsory attendance law, however, is suggested by some, who feel this would tend to cushion the immediate shock and that within a year or two the law could be safely

reenacted.

That a de-segregation decision would be a signal for the opening of many private schools is generally agreed, and the question of State subsidies for private schools undoubtedly would arise.

There are also those who hold that, if the Supreme Court so decrees, the State should just abolish segregation in the public schools—no more and no less.

At the other extreme are the very many among those who have discussed the matter, especially at the time of the lower court hearings on the school cases two years ago, and whose discussion led to a blank wall of opinion that racial integration of the public schools is unthinkable, and that is all there is to it.

George Expecting Supreme Court To Frown on Segregated Schools

By GLADSTONE WILLIAMS
Constitution Washington Bureau

WASHINGTON, June 10 — After studying the questions raised by the U. S. Supreme Court today in ordering further hearings on the public school segregation cases, Georgia's Democratic Senator George expressed the view here today that the high tribunal's action has ominous implications for the South.

The Georgia senator, long recognized as one of the leading constitutional authorities in Congress, told The Constitution that the court's action clearly indicated to him that a majority of the justices were prepared to hand down a decision outlawing segregation as it is practiced in the public school systems of the Southern states.

Senator George read this meaning not from the questions asked by the court in ordering rehearings on the case, but from others which it failed to ask. He regarded it as particularly "significant" that the tribunal did not seek further arguments on the dual form of federal and state governments permitted under the present constitutional system.

"This, to my mind, is the basic issue in the case," he said. "Yet the court in propounding a series of questions on which it wanted to hear further arguments before rendering a decision did not request any additional discussion on the subject of our dual system of government. It would indicate to me that a majority of the court thinks the states have no right under the 14th amendment to order segregation in their public schools. Consequently, I anticipate that the system long practiced in the South of separating the two races in different schools will be held to be discriminatory and therefore unconstitutional, as a majority of the present court sees it."

While the Supreme Court's decision on the pending segregation cases is not scheduled to come until late in the fall or perhaps early next year, Senator George said the South might as well anticipate its ultimate impact and prepare to meet it. The rehearings that have been ordered will not take place until October and it is expected to be some months after that before a decision is written.

The theory of dual form of government, interposed as a barrier to the federal government's interfering in state domestic affairs, rests on the premise that the states reserved for themselves all powers not specifically delegated to the central government. Senator George asked, "Why should the state governments continue to exist if they can't regulate their domestic and internal affairs?"

The Georgia senator, incidentally, is one of the few living members of the Senate who has ever been quoted in a Supreme Court decision in support of its dictum.

The five questions publicly propounded by the court in ordering the October rehearings covered both past history and possible future rulings. Two of them had to do with how to handle a decision against segregation, assuming the court should reach such a conclusion.

Here again Senator George thought this was significant.

"The court," he said, "seemed to be concerned about how it should put into effect a segregation order, if one is issued. The emphasis thus raised on this phase of the matter may be indicative.

"Evidently there is some division in the court on the basic issues involved or else the further hearings would not have been ordered. But the tenor of the court's action, and especially its failure to propound any question on our dual form of government, warrants the assumption that a majority of the tribunal has made up its mind as to this phase. That, in turn, points to an anti-segregation decision."

Schools Before The Court

On December 7, the United States Supreme Court will hear rearguments on whether or not the public schools supported by the taxpayers should be open to all citizens without regard to race, creed, color or national origin.

There are five specific cases before the court.

The Clarendon County case, commonly known as the South Carolina case, had its origin in the suit of a group of pupils and parents against school district No. 28.

Both sides, though differing at first, admit that public schools for colored and white children are now equal.

The question then before the court is whether the State of South Carolina has a right, under the Fourteenth Amendment, to require colored and white children to attend separate schools.

The Delaware case differs from the others in that it was tried in the State courts. The Delaware Court of Chancery for New Castle County held that school facilities and opportunities afforded colored children were unequal and issued an injunction for their admission to the white schools.

The Delaware Supreme Court affirmed this decision and the State of Delaware appealed to the United States Supreme Court.

The Kansas case has become virtually a moot question. Since appeal by the State of the case, the Topeka School Board has decided to do away with segregation.

The Virginia case involves the same questions as the South Carolina, Kansas and Delaware cases. The chief contention is that the Fourteenth Amendment in prohibiting any State from denying any person the "equal protection of the law" thereby outlaws racial segregation.

The District of Columbia case differs from the State cases in that it was brought under the Fifth Amendment. This Amendment prohibits the Federal Government from depriving any person of "life, liberty, or property, without due process of law."

It presents the clear-cut issue of whether racial segregation in public schools was in itself unconstitutional.

C. W. MACKAY,
Editor, Afro-American Newspapers.
Baltimore, Md.

Doubt new Kansas brief in school JC rehearing

By LOUIS LAUTIER

WASHINGTON, D.C. (NNPA)—Oral argument on the reargument of the five school segregation cases now pending before the United States Supreme Court, scheduled to begin at noon, December 7, will run eleven hours, if all time allotted by the court is used.

But it is doubtful that the entire eleven hours will be used. Lawyers on both sides have been allowed one hour for each case, which makes a total of ten hours. In addition, the Attorney General has been alloted one hour.

Doubt as to the time that will be consumed in oral argument is due to the fact that nobody yet knows whether the State of Kansas plans to file a brief and participate in the oral argument.

As yet, the only briefs filed are those on behalf of the petitioners. The NAACP filed a joint brief in the South Carolina, Virginia, Kansas, and Delaware cases; and attorneys for the petitioners in the District of Columbia case have filed their briefs.

The State of Delaware, which is the petitioner in the Delaware case, has filed its brief. The Delaware case was decided against the State, when the Delaware Supreme Court upheld the decision of the Chancery Court ordering the admission of colored children to two white public schools in New Castle County, Delaware.

Under the usual procedure, petitioners are required to file their briefs on the merits, three weeks in advance of argument. This, the petitioners have done in all five cases.

The respondents usually must get their briefs on file, a week before the argument. But the court, in ordering the five school segregation cases reargued, set no deadlines for the filing of briefs.

The respondents' briefs for the States of South Carolina, Virginia and Kansas and the District of Columbia have not yet been filed; nor has the brief to be filed by the Attorney General, on behalf of the United States. But court attaches expect these briefs to be filed, before the end of the week.

The Attorney General of Kansas was tardy in entering the Kansas case after it had been appealed to the Supreme Court, on Novemeber 19, 1951. He did nothing until the Supreme Court, a year later, requested the State to present its views in oral argument "because of the national importance of the issue presented and because of its importance to the State of Kansas."

If the State did not desire to appear, the Supreme Court requested the Attorney General to advise "whether the State's default shall be construed as a concession of invalidity."

During the oral argument, a year ago, Assistant Attorney General Paul E. Wilson told the court that a Supreme Court decision outlawing racial segregation in public schools would have very little affect in Kansas.

Since reargument was ordered for the cases, the Topeka Board of Education has voted to abolish racial segregation in its schools. This action makes the question moot as to whether the Kansas law permitting first-class cities to maintain segregated elementary schools is valid.

The Kansas case, which many legal minds regard as the most important of the five cases—because of the findings of the special three-judge Federal District Court, was brought in behalf of children attending elementary schools in Topeka and their parents.

They sought to enjoin enforcement of the Kansas statute. The Topeka Board of Education was the defendant in the case. At the time the suit was brought on March 22, 1951, Topeka was divided into eighteen school districts.

In each of them, the school board maintained a kindergarten and an elementary school for white children. There were four elementary schools for colored children. Colored and white children were not segregated in the junior and senior high schools.

The District Court found, in the Kansas case, that the physical facilities, the curricula, courses of study, educational qualifications of teachers and quality of instruction in the white and colored elementary schools in Topeka were comparable.

The only item of discrimination was bus transportation, which was furnished for colored children but not for whites. But the court also found that:

"Segregation of white and colored children in public schools has a detrimental effect upon the colored children. The impact is greater when it has the sanction of the law; for the policy of separating the races is usually interpreted as denoting the inferiority of the colored group.

"A sense of inferiority affects the motivation of a child to learn. Segregation with the sanction of law, therefore, has a tendency to retard the educational and mental development of colored children and to deprive them of some of the benefits they would receive in a racial integrated school system."

The court, however, upheld the validity of the Kansas statute and refused to enjoin the Topeka school board from maintaining segregated elementary schools.

Even if the State of Kansas should abandon the case pending against it, it is possible for the court to take the position that the question has become moot; and the court generally avoids rendering a decision in moot cases.

The first and second of the five questions which the court, in ordering the cases reargued, directed the lawyers and the Attorney General of the United States to discuss in their briefs and on oral argument deal with these historical facts:

What evidence exists as to whether the Congress, in submitting the Fourteenth Amendment, and State Legislatures or conventions, in ratifying it, contemplated or understood that it would abolish segregation in public schools?

If there is no evidence to that effect, was it the understanding of the framers of the amendment that (1) a later Congress might abolish such segregation under the provision of the amendment giving Congress power to enforce it, or (2) is it strue the amendment, "in the light of future considerations," as abolishing such segregation of its own force?

The NAACP, answering these questions in its brief, asserts that the evidence reflect the intent of the proponents of the Fourteenth Amendment and the "substantial understanding" of its opponents that the amendment would, of its own force, prohibit all forms of state-imwithin the judicial power to conposed racial distinctions, including all racial segregation in public education.

Lawyers set for argument

Kansas, Delaware also file briefs

WASHINGTON — Argument in the five school segregation cases now pending before the United States Supreme Court is set for Monday, December 7.

A battery of distinquished attorneys for both the plaintiffs and the defendants await the court date.

The cases before the court are from Kansas, South Carolina, Virginia, Delaware and the District of Columbia. They first were argued in December, 1952.

Last June the high court asked that all parties and the Attorney General submit supplementary briefs answering questions in the mind of the court concerning the intent of Congress in adopting the Fourteenth Amendment and the ratification of the amendment by the states.

NAACP Filed First

The NAACP filed its supplementary briefs for the plaintiffs in the four states on November 16. The same day attorneys for the Consolidated Parents Group in Washington also filed a brief.

The State of Delaware likewise filed. The board of education of Topeka, Kansas, one of the defendants, November 27, filed a brief notifying the court that as of Sept. 3, 1953, it decided to terminate segregation in its elementary schools and hence no longer was interested in the constitutional phase of the issue.

The Kansas brief, however, stated that the board was interested in the administrative difficulties of immediate transition, and asked that it be allowed to proceed "in a gradual and orderly manner."

12d 1953

EDUCATION

NAACP
BRIEF

A Big Reply To 5 Big Questions

130 Lawyers Collect Data From 350 Persons For 240-Page Answer In School Bias Case

By ARNOLD DE MILLE

NEW YORK — The NAACP's brief answering the five Supreme Court questions in the pending public school segregation cases is a living example of the effort and courage of men and women who believe in equality and a fair shake for all.

The document, 240 pages of bound text, was filed Monday with the United States Supreme Court in Washington, and answers the now-famous five questions asked by the high judiciary on June 8th last.

The reargument of the five cases — South Carolina, Topeka, Virginia, Delaware and Washington — comes up before the high court on December 7 and 8.

While the brief is the combined effort of some 350 persons scattered across the country, the compiling of the material was done by 130 lawyers and non-legal experts.

Most of them are familiar to most of us, but their names cannot be mentioned publicly for fear that their jobs would be jeopardized.

However, the NAACP had the assistance of college presidents, professors of law, historians, political scientists ad psychologists.

And there was no color line.

Many of the peo ple who pnitum

NOT FOR CREDIT

Many of the people who put in endless hours and sleepless nights compiling the material never did and never will receive anything more than the satisfaction of taking part in putting together probably the most comprehensive brief of its kind ever written.

The people who did the actual writing of the brief had to wade through thousands of pages of facts and figures submitted by researchers and experts from 45 states.

By a week before the brief was delivered to the printer, there was not one member of that group who had not paid a visit to a physician.

They were both mentally and physically exhausted.

The group, headed by Thurgood Marshall, NAACP Special counsel of the NAACP legal defense and Educational fund, and his assistant, Robert L. Carter, answered the Supreme Court questions directly by saying that "the 14th Amendment was intended to destroy the caste and color legislation in the United States, including racial segregation."

The first two questions asked

SOME OF THE 130 LAWYERS who helped draw up NAACP answer to U. S. Supreme Court questions in connection with the public school segregation cases to be argued next month. The answer covered 240 printed pages. They are Leonard Schroeder, legal research assistant, Spottswood W. Robinson, 3rd, Richmond, Va., Robert L. Carter, assistant special counsel, U. S. Tate, Dallas, Texas, Southwestern counsel, Mrs. Constance B. Motley, associate special counsel, George E. C Hayes, professor Howard U. Law School, Thurgood Marshall, special councel, Frank D. Reeves, Washington, D. C., and James M. Nabritt, secretary Howard U. and professor of law.

by the high court dealt with whether Congress or the states understood that the 14th Amendment supposedly abolished school segregaion and whether it would be within the judicial powers of the Supreme Court to abolish segregation "of its own force."

The other three questions dealt with suggested procedures that could be followed in the event the Court rules segregation a violation of the 14th Amendment.

STATES SURRENDERED RIGHTS

To the first two questions Marshall and Company say that they have found sufficient evidence that the 39th Congress, which drafted the 14th Amendment, and the states which ratified the Amendment "contemplated and understood that the amendment would deprive the state of their power to impose any racial distinctions in determining when, where or how its citizens would enjoy the various civil rights afforded by the states."

The framers of the 14th Amendment were, according to the N. A. A. C. P. lawyers, formulating a constitutional provision setting broad standards for determination of the relationship of the state to the individual, but could not list all of the specific categories of existing and prospective state activity which were to come within the constiutional don'ts.

The attorneys say further that they have evidence to prove that the states which ratified, the Amendment understood that the law deprived them of the authority to establish segregated schools.

They point out that the law which abolished slavery in the United States was passed in 1865 and the 14th Amendment was to clarify the status of the Negroes and was passed and ratified in 1868 — 18 years before the "separate but equal" doctrine ever came to existence.

CLARIFY NEGRO STATUS

In short, the NAACP lawyers argue "the 14th Amendment was designed to take from states all powers to enforce castes or class distinction."

To questions three, NAACP experts reiterated that the state is without power to set up seperate school systems for white and colored children.

"This Court (Supreme Court) in a long line of decisions has made it plain that the 14th Amendment prohibits a state from making racial distinctions in the exercise of governmental power."

Further, the learned gentlemen argued that the Court has made it plain that no state may use color or race as an axis upon which the state's power turns, and the public school system has not been the exception.

To question number five, the attorneys say that the Supreme Court "should declare invalid the state constitutional and statutory provisions requiring segregation in public schools.

"After careful consideration of all the factors involved in transition from the segregated school systems to unsegregated school systems, appellants know of no reasons which would warrant the postponement of the enforcemen of appellants possessive rights by this Court in the exercise of its equity powers." The attorneys for the Negro students say

NO REASON FOR DELAY

"There is no equitable justification for postponement of appellants' enjoyment of their rights . . . These rights are personal be- its individual constitutional right to grow up in our democratic society without the impress of state imposed racial segregation in the public schools."

In their conclusion, NAACP attorneys say that under the quitable decisions of this court, the state constitutional and statutory provisions involved are clea:ly unconsitutional.

". . . Moreover, the historical evidence surrounding the adoption, submission and ratification of the Fourteenth Amendment proscribed all state imposed racial restrictions.

"The Negro children in these cases are arbitrarily excluded from state public schools set apart for the dominant white groups. Such a practice can only be continued in a theory that Negroes, qua Negroes, are inferior to all other Americans.

INFERIOR BY IMPLICATION

"The constitutional and statutory provisions herein challenged cannot be upheld without a clear determination that Negroes are inferior and, therefore, must be segregated from other human beings. Certainly, such a ruling would destroy the intent and purpose of the Fourteenth Amendment and the very equalitarian basis of our Government."

Delaware was the first to file answers, which was Saturday, Nov. 14th.

The state Attorney General argued that the state does have the right to maintain segregated school and that the Supreme Court does not have the power to abolish the system.

The questions asked by the Supreme Court are irrelevant in the first place, the Attorney General said.

The NAACP lawyers representing the Negro children and parrents in the case are; Thurgood Marshall, Robert L. Carter, William R. Ming, jr., James M. Nabrit jr. Jack Greenberg Oliver W. Hill Louis L. Redding Spottswood W. Robinson III, Charles S. Scott, Charles L. Black, jr., J wood H. Chisolm William T. Coleman jr., Charles T. Duncan, George E. C. Hayes, Constance Baker Motley, David E. Pinsky Jack B. Weinstein and Loren Miller.

Brownell Brief Supports NAACP

WASHINGTON — Monday, December 7 the United States Supreme Court will convene to hear argument on the question of the constitutionality of public school segregation.

One year ago the high court heard arguments for and against the outlawing of racial segregation in public schools of Washington, D. C., Topeka, Kans., Clarendon County, S. C., the State of Delaware and Virginia.

Last June the court ordered lawyers on both sides to answer five questions concerning the intent of the framers and ratifiers of the Fourteenth Amendment to the Constitution. Lawyers for the National Association for the Advancement of Colored People, representing Negro plaintiffs, maintain public school segregation violates the Fourteenth Amendment.

ORIGINALLY SET IN OCT.

The Supreme Court set October 12 for re-argument based on the questions it had posed. However, Attorney General Herbert Brownell, who was asked to submit an objective brief in this case as a friend of the court, requested more time, and the December 7 date was established.

Last Week Mr. Brownell submitted a 188 page brief, contents of which President Dwight D. Eisenhower had seen. In essence the Attorney General's brief supports the contention of the anti-segregation forces that segregation per se is unconstitutional.

A few days earlier the NAACP filed its brief of 256 pages in a book which cost $40,000. It is composed of three parts and a 36 page supplement concerning theories about the origin of the Fourteenth Amendment.

MARSHALL HEADS GROUP

Thurgood Marshall, chief counsel for the NAACP, heads a group of distinguished attorney representing those who seek abandonment of segregation in public schools.

John W. Davis, prominent constitutional lawyer, is the chief attorney for the advocates of segregation.

Among the questions asked by the court was a request for evidence that the framers and ratifiers of the Fourteenth Amendment to the Constitution understood that it would abolish public school segregation.

ASKED FOR EVIDENCE

If such was not true the court asked for evidence that the framers of the Amendment anticipated that future congresses might so act or that the Supreme Court might interpret the Amendment as abolishing segregation "of its own force."

If the answers to the first two questions do not settle the issue, the court requested that attorneys argue whether "it is within the judicial power, in construing the instrument, to abolish segregation in public schools."

If the court should have the power to abolish segregation the Justicse then want to know just how it might be handled; whether an order be issued that Negro children be admitted at once to schools of their choice, or; whether the court decrees a gradual adjustment "be brought from existing segregated systems to a system not based on color distinctions."

BROWNELL'S BRIEF

Following is a portion of statements in Attorney General Brownell's brief:

1. The primary and persuasive purpose of the Fourteenth Amendment, as is shown by its history and as has been repeatedly declared by the Supreme Court, was to secure for colored people "full and complete equality before the law and to abolish all legal distinctions based on race or color."

2. The legislative history of the Fourteenth Amendment in Congress is not conclusive that it was understood it would abolish segregation in the public schools.

3. The available material relating to the ratification proceedings in the various state legislatures is too scanty and incomplete, and specific references to school segregation too few and scattered, to justify any definite conclusion as to the existence of a general understanding in such legislatures as to the effect which the amedment would have no school segregation.

4. It is within the judicial power to direct such relief as will be effective in eliminatng existing segregated school systems.

5. If the court should hold that laws providing for segregated schools are unconstitutional, it should remand the five cases to the lower courts with directions to carry out the decision "as expeditiously as the particular circimstances permit."

WHAT CONGRESS MEANT

According to the Brownell brief: "Many of the Congress which considered the Thirteenth Amendment understood it to abolish not only slavery but also its concomitant legal discriminations. This understanding rested on a belief that the amendment had made the colored man an indistinguishable part of the population and hence entitled to the same rights and privileges under the laws as all others.

"The enactment of the Black Codes in the Southern states made it obvious, however, that additional protection by the national government was required.

"In sum, while the legislative histroy does not conclusively establish that the Congress which proposed the Fourteenth Amendment specifically understood that it would abolish racial segregation in the public schools, there is ample evidence that it did understand that the amendment established the broad constitutional principles of full and complete equality of all persons under the law, and that it forbade all legal distinctions based on race or color.

SPECIFIC APPLICATION

"Concerned as they were with securing to the colored freedmen these fundamental rights of liberty and equality, the members of Congress did not pause to enumerate in detail all the specific applications of the basic principle which the amendment incorporated into the Constitution.

"There is some evidence that this broad principle was understood to apply to racial discriminations in education, and that it might have the additional effect of invalidating state laws providing for racial segregation in the public schools."

In its document the NAACP maintained that the Supreme Court does have the power to end segregation in public schools and in doing so would not encounter difficulty. It points out that the history of Supreme Court decisions with respect to civil rights indicates a definite trend to abolishing segregation in every phase of Amreican life as unconstitutional.

CITES 39th CONGRESS

The brief cites the 39th Congress which according to Marshall showed determination to prevent future congresses from minimizing federal protection of colored people's rights.

In citing the intent of the framers of the Amendment the N.A.A.C.P., brief points out they were aware of the attitude of southerners on the subject of educating Negroes and arguments of legislators in the States and it is apparent that the former slave states, in seeking readmission to the union, realized they would be robbed of the power to continue segregated education under the Fourteenth Amendment.

The brief maintains that the majority of the 22 union states ratifying the Fourteenth Amendment understood it to forbid racial segregation in public schools.

The NAACP forces call for immediate admittance of Negro children to public schools without regard to race or color and are opposed to a gradual program of desegregation

A waste of time

In the face of Supreme Court decisions in the Heman Sweatt, Ada Sipuel Fisher and the G. W. McLaurin cases, most state universities have opened their doors to all qualified students.

Only six states have become bitter enders in resisting this democratic trend.

These are Barnes' South Carolina, Talmadge's Georgia, Alabama, Florida, Mississippi and Louisiana.

Suits are pending in Georgia, Alabama, Florida and Louisiana. Only in Mississippi has no legal action been inaugurated.

Last week Louisiana's case was settled when U.S. Judge J. Skelly Wright issued an injunction forbidding Louisiana State University from barring Alexander Tureaud Jr., and any other qualified colored applicant from admission.

Tureaud's victory was significant because he becomes the first colored student to gain through court decision admission to undergraduate study in a state university.

Though granting Louisiana State University the right to appeal, Judge Wright stood firm in his determination that Tureaud be admitted at once.

He was enrolled, given a dormitory room and attends classes without incident.

But the school refuses to abandon the fight.

Judge Wright's ruling will be carried before the Fifth Circuit Court of Appeals on October 5 and if upheld there, presumably will be taken to the U.S. Supreme Court.

Eighteen lawyers, all graduates of the Louisiana State University law school, have volunteered their services without fees, to fight Tureaud's admission to the bitter end.

Their action is a reflection on both their common sense and the quality of law education they obtained at LSU.

No smart lawyer would bother to waste his time and talent on a case where law and fact and even precedent are so clearly stacked against him.

Segregation Study Panel Set Up Here

Board To Map School Plans

By HERMAN HANCOCK

The Atlanta Board of Education yesterday created a five-man special committee to map plans in the event the Supreme Court outlaws segregation in schools.

A. C. (Pete) Latimer was named chairman to serve with J. Austin Dilbeck, Devereaux F. McClatchey, P. L. Bardin and Ed S. Cook.

The committee was set up after Latimer insisted study should begin immediately to determine procedures if segregation ends in Atlanta.

Latimer said he has no plans, but the committee will hold conferences with other officials to explored all avenues of the situation.

COLLECT DATA

"We should put the responsibility for a profound and exhaustive study of the problem on the committee," Latimer said. "Let it collect all available information and formulate recommendations.

"There probably will be many factors which we cannot predict. There is a law now to bar state appropriations to schools if segregation ends," he added.

McClatchey attempted to defer action "at this time," but Bardin and others supported Latimer, who said he expected a decision "probably in December."

Latimer opened the discussion by asking Miss Ira Jarrell, city school superintendent, what was being done to meet the problem if it comes. Miss Jarrell answered that nothing tangible was being done, although school officials were keeping abreast of developments.

NO CRISIS

She pointed out that Negro schools generally are built in Negro communities, and even if the order came no immediate crisis was anticipated.

Meanwhile, Miss Jarrell announced present school enrollment totals 83,693 with 4,140 students in double sessions. Of the latter number, 3,289 are Negroes.

Miss Jarrell added, however, that completion of several schools in the state-financed expansion program will remove half of double session students from that category before start of the new semester.

BOND ISSUE AIM

Board members agreed to press for a $13,000,000 bond issue next spring to eliminate remaining double sessions and provide facilities for anticipated increases in school population.

Despite recommendations for deferral by D. M. Therrell, rules committee chairman, the board authorized the buildings and grounds committee to recommend needed insurance and the companies with which it will be placed in the future.

In another action, a proposal was adopted in which the finance committee will consider and advise with the board in adoption of the annual budget rather than preparing the budget. Therrell had also sought deferral on this rule change.

Hand Asks 'Clear Thinking' If Segregation Is Outlawed

THOMASVILLE, Oct. 28 (AP)—House Speaker Fred Hand said today the state should try for a solution, within bounds of Southern tradition that does not disrupt education, if the U.S. Supreme Court outlaws public school segregation.

He urged "calm and clear thinking in our deliberations of our rights and limitations" in event the court rules out segregation.

Fred Hand

Hand, mentioned as a possible candidate for governor, spoke at a Second Congressional District meeting of the Georgia Education Association.

He said increased school funds is not the only answer to educational problems. More attention should be given to developing school curriculums, improving the transportation system and raising the standards of the teaching profession, Hand said.

Outlining construction work of the State School Building Authority, of which he is chairman, Hand said counties vary greatly in the financial support given schools. The range runs from four per cent of school funds provided locally in Union County to 72 per cent in Fulton.

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GOV. EARL WARREN
CHIEF JUSTICE OF THE UNITED STATES

Courier Exclusive

Warren Cites Racial Views

By JAMES EDMUND BOYACK
(Exclusive to the Courier)

WASHINGTON, D. C.— The swearing in Monday of Gov. Earl Warren of California as Chief Justice of the United States last week may have a decisive effect on civil rights cases coming before the court.

Elected Governor three times with both Democratic and Republican support, the new Chief Justice becomes the first liberal to be named to the highest judicial post.

* * *

THIS WRITER believes his liberal views on human rights will sway the balance in favor of the plaintiffs in the so-called school segregation cases scheduled to be reargued before the court next Dec. 7.

At present the court is evenly balanced on cases where human rights and the Fourteenth Amendment are involved.

On the so-called liberal wing are Justices Frankfurter, Black and Douglas. Considered conservative are Justices Burton, Reed, and Clark. Justices Minton and Jackson are generally to be found in the middle of the road, both brilliant jurists and widely respected for their opinions.

Governor Warren was the Republican party's Vice Presidential candidate with Governor Dewey of New York in 1948. Last year, he was California's favorite son and held his delegation together in spite of tremendous pressure both from the Taft and Eisenhower forces at the Republican National Convention in Chicago.

* * *

PRIOR TO the convention, your reporter had a long conference with the new Chief Justice in New York on his civil rights' views.

"I am for a sweeping civil rights program, beginning with a Fair Employment Practice Act," he declared.

"I am for doing all the things our Republican platforms have promised in the last eight years.

"I insist upon one law for all men.

"I believe that the Republican party has been a traditional friend of the Negro when it had an opportunity to show it," he said.

* * *

THE GOVERNOR said he had addressed people in all parts of the country in recent months and had answered their many questions.

"They want to know if we are concerned with their problems as individuals; for their segment of the economy; for their region of the country," he explained.

"They are not demanding," he told the Courier. "They merely want to know that their problems will be considered, and that they, regardless of where they live, or how they earn their living, or how they worship, or the color of their skin—are to be a real part of the Administration." His next statement was prophetic:

"They want to know if they and their children are to have opportunities in life, equal to others."

The new Chief Justice now will be called upon to decide if the constitutional rights of Negro school children, forced to attend segregated schools by state law, are thereby violated under the Fourteenth Amendment of the Constitution of the United States.

* * *

HIS NEXT statement also was prophetic.

"If these questions are answered in the affirmative, the people will be happy to elect a Republican Administration," he said.

The 1948 civil rights platform on which the new Chief Justice ran and which he publicly endorsed on many occasions, follows:

"Lynching, or any form of mob violence anywhere, is a disagree to any civilized state, and we favor the prompt enactment of legislation to end this infamy.

"One of the basic principles of this Republic is the equality of all individuals in their right to life, liberty, and the pursuit of happiness. This principle is enunciated in the Declaration of Independence and embodied in the Constitution of the United States; was vindicated on the field of battle, and became the cornerstone of the Republic.

"The right of equal opportunity to work and to advance in life never should be limited in any individual because of race, religion, color or country of origin.

"We favor the enactment and just enforcement of such Federal legislation as may be necessary to maintain this right.

"We favor the abolition of the poll tax as a requisite to voting.

"We are opposed to the idea of racial segregation in the armed forces of the United States."

Court Voids Jim Crow Pattern In 'Frisco Housing

San Francisco (ANP).—The State District Court of Appeals ruled last week that Negroes may not be barred from public housing projects in San Francisco on the basis of race.

The "neighborhood pattern" policy which bars Negroes from most projects and is used by the S. F. Housing authority was declared unconstitutional.

This decision upheld a Superior court ruling of last October that the housing authority acted unconstitutionally in refusing to admit two Negro families.

Franklin H. Williams, regional secretary-counsel for the West Coast jurisdiction of the NAACP, filed the original suit as a test case of segregation in public housing.

Williams said the appellate court's decision should apply throughout California. He now expect Oakland, Pittsburgh, Vallejo, Stockton, San Francisco and all other communities which have been practicing various forms of segregation in public housing to comply with the law," he said.

Ten projects are operated in San Francisco by the housing authority. One is all Negro, one predominantly Negro, one all Chinese, and the other seven are predominantly white.

The NAACP is demanding that the housing authority drop its segregation policy immediately and admit all qualified persons to all projects regardless of race.

It is expected, however, that the housing authority will carry the battle to the U. S. Supreme court, for the decision is based on the federal constitution.

Cal. High Court Will Not Alter Anti-Jim Crow Case

SAN FRANCISCO,—The California State Supreme Court today denied a hearing to the San Francisco Housing Authority in its effort to obtain a reversal of the Circuit Court ruling upholding the decision of Superior Judge Melvin Cronin in declaring racial segregation in San Francisco's public housing projects unconstitutional.

The case filed by attorneys for the National Association For The Advancement Of Colored People in behalf of Mattie Banks, Dollie Cain and James Charley, jr. challenged the legality of the 'Frisco Housing Authority's "neighborhood pattern" policy which resulted in the segregation of Negro, Chinese and white residents of public housing units in this city in separate projects.

Attorneys for the NAACP were Terry Francois, Carl Metoyer of San Francisco, Loren Miller of Los Angeles and Nathaniel S. Colley of Sacramento.

In commenting upon the decision of the Supreme Court, Franklin H. Williams, Regional Secretary-Counsel of the NAACP stated; "

"We are deeply indebted to our counsel who fought and won this case. We are prepared to go before the U. S. Supreme Court if necessary to obtain support for Judge Cronin's decision."

12d 1953

JURIES -North Carolina

Court upholds use of poll tax list for juries

WASHINGTON, Feb. 10—(AP)—The Supreme Court yesterday upheld North Carolina's use of property and poll tax lists—on which few Negroes' names appear—for selection of juries.

By a 6 to 3 division, which produced nearly 40,000 words of conflicting views among the justices, the tribunal rejected the appeals of four Negroes sentenced to death in three cases. Two involved the rape of white women; the third the killing of a white taxi driver.

The Negroes in each case had sought to set aside their state court convictions with habeas corpus actions in lower federal courts. They contended that Negroes had been improperly excluded from either the grand or trial juries they had confronted.

* * *

JUSTICE REED, who wrote the court's majority opinion of some 15,000 words, noted the manner in which North Carolina draws its jury panels and said:

"We do not think the use, nondiscriminatory as to race, of the lists, violates the federal constitution's 14th amendment (guarantee of due process of law), nor can we conclude on the evidence adduced that the results of the use require a conclusion of unconstitutionality."

"Our duty to protect the federal constitutional rights of all does not mean that we must or should impose on states our conception of the proper source of jury lists, so long as the source reasonably reflects a cross-section of the population suitable in character and intelligence for that civic duty."

* * *

JUSTICE FRANKFURTER wrote a dissenting opinion in which Justices Black and Douglas concurred.

Justice Jackson wrote a 6000-word opinion concurring with the majority, and Justice Burton, joined by Justice Clark, also turned out a brief concurring opinion.

The cases decided were those of Clyde Brown, convicted of raping a high school girl in Winston-Salem, N. C.; Raleigh Speller, who got death for raping a white woman in Bertie County, N. C., and Bennie Daniels and Lloyd Ray Daniels, who confessed they killed a taxi driver near Greenville, N. C.

In all three cases the convictions were upheld by the State Supreme Court. The Negroes then appealed in vain to lower federal courts to win release and new trials under habeas corpus proceedings.

12d 1953

LABOR

U.S. Supreme Court Refuses To Let NAACP Lawyers Oppose Discrimination In Brief

Washington, D. C., April 13—The United States Supreme Court today denied the request of the NAACP Legal Defense and Educational Fund for permission to file a brief as amicus curiae (friends of the court) in a case which involved the right of an employer to discriminate against a worker because of race, religion, national origin or non-union membership.

The case was that of the Gaynor News Company vs. the National Labor Relations Board, in which an employer is asking the U.S. Supreme Court to reverse a lower court's ruling which declared it an unfair labor practice for it to deprive non-union workers of benefits given to union members.

In making the request for permission to appear as amicus curiae in the case, Thurgood Marshall, Legal Defense and Educational Fund counsel and director, and Jack Greenberg, assistant counsel, had pointed out that while racial discrimination did not appear to be involved in the case, certain legal principles might be determined by the high court's decision, principles which might "immediately affect the rights of Negroes and other minorities in their quest for equal employment."

In its motion, NAACP Legal Defense attorneys stated that in their belief the briefs filed with the Supreme Court would not adequately present the facts as they would bear "upon the status of Negro and other minority group workers."

In many situations in which a labor union is the collective bargaining agent, Negroes and other minority groups are excluded from membership solely because of race, religion or national origin," they pointed out.

The attorneys claimed that if an employer is given the right to discriminate against a worker because of non-union membership, then Negroes and other minority groups will be deprived of the right to file unfair labor practice charges with the National Labor Relations Board and will threfore be deprived of equal employment opportunity.

The Gaynor News Company had first refused the Legal Defense Fund permission to file in connection with the case. Refusal by the Supreme Court means that NAACP attorneys will not be able to participate in the case in any capacity.

LEGAL ACTION INSTITUTED IN FEDERAL COURT

Negroes will be admitted to state-supported Southern white colleges of the undergraduate level for the first time this fall as a result of a decision handed down by a federal judge in New Orleans and a legal opinion from the State Attorney General's office in Virginia.

Denied admission to Louisiana State University, A. P. Tureaud, 17 year-old son of a New Orleans attorney, instituted legal action in federal court.

GRANTED INJUNCTION

Friday, United States District Court Judge J. S. Kelley Wright granted Tureaud an injunction permitting him to study as a freshman at LSU. Judge Wright ruled that the university had denied him entry "solely because of his race and color" when equal facilities were not available at state-supported Negro schools.

Tureaud immediately made plans to enroll in the arts and science college of LSU in preparation for entering the LSU Law School.

APPLICATION APPROVED

At Blacksburg, Va., the application of 18-year-old Irving Linwood Peddrew, of Hampton, Va., to enter Virginia Polytechnic Institute was approved by the Institute board of visitors after it studied an opinion from State Attorney General J. Lindsay Almond, Jr., that the state's Negro schools did not offer "in comparable form and substance" the electrical engineering courses he wanted.

Peddrew has made plans to enter VPI as a day military student.

At New Orleans, Robert L. Carter of New York and attorney for the National Association for the Advancement of Colored People, spoke on behalf of Tureaud, who was also represented by his father.

Attorney Carter told the court that facilities at Southern University, state-supported Negro university near Baton Rouge are not equal to facilities at LSU.

$12,000,000 BUDGET

LSU has a student body of 6,400 and an annual budget of 12 million dollars—an expenditure of $1,875 per student," he said.

"Southern University has a two million dollar budget and 2,900 students, or a $689 expenditure per student," he added.

"How then can the two schools offer equal educational opportunities?" Attorney Carter asked.

W. Scott Wilkinson, attorney for LSU, denied that Tureaud could not get an equal education at Southern University.

"The educational opportunities at Southern are equal, or substantially equal to those at LSU," he said.

Attorney Wilkinson also said that Louisiana laws require segregation of races, and the state is acting within its police powers in excluding Negroes from schools reserved for whites, and vice versa.

The LSU attorney filed a motion to dismiss Tureaud's suit on the ground that he (Tureaud) had no right to file his motion on behalf of persons other than himself

Attorney Carter contended that the issue of segregation as such was not a matter before the court

INEQUALITY STRESSED

He pointed out that he was not saying that Southern University is not a good school, but that the issue involved was the inequality of the combined courses offered by Southern and LSU.

He said LSU offers law combined with arts and sciences, geology and commerce whereas Southern offers law combined with political science, English and mathematics. He further declared that no degree has ever been awarded by Southern in a university program of combined courses in the field such as at LSU.

New Ruling Given In LSU Case

NEW ORLEANS— A new ruling was giving in the Louisiana State University A. P. Tureaud, Jr. case, when the U. S. Fifth Circuit Court of Appeals held that a federal judge exceeded his authority when he ruled that qualified Negroes must be admitted to combined arts and sciences and law courses of Louisiana State University, Sept. 1[illegible]

The dissenting judge was Richard Reeves. The opinion was handed down on Oct. 28.

According to Attorney A. P. Tureaud, father and legal counsel of the 17 year old student, an appeal to the U. S. Supreme Court has been filed against the U. S. Fifth Circuit Court's decision.

Judge Skelly Wright, who upheld the attorneys for the plaintiff, ruled that equal facilities were not available at Southern University. He issued a temporary injunction ordering the admission of Tureaud.

A 1953 graduate of Clark High School, Tureaud enrolled at LSU Sept. 18. His father asked for an injunction restraining the LSU Board of supervisors from pursuing a policy of refusing to admit Negroes unless forced to do so by court order.

In its opinion, the circuit court said Judge Wright did not have the jurisdiction to hear the case alone, but it should have been heard by three judges.

The circuit court did not pass on the merits of the case. Their opinion was handed down on a motion by the LSU board of supervisors for a stay order and on appeal from judgment issuing a preliminary injunction.

The southern school will not act until a study of the opinion handed down by the appellate court has been made.

Earlier Judge Wright had denied the motion for a new trial and refused to grant a stay of execution of his injunction, but he did grant an appeal to the Circuit Court of Appeals which rendered its opinions.

Representing young Tureaud are his father, Robert L. Carter of the NAACP national office legal staff and U. Simpson Tate, NAACP regional counsel of Dallas, Texas. The youth is still attending classes at LSU.

Judge Rules That Theatre Can Refuse To Admit Negroes

LOUISVILLE—(ANP)— Because it only leases the Iroquois Amphitheatre for a few weeks, the Louisville Park Theatrical Association is not guilty of discrimination against Negroes.

That's the opinion of the United States circuit court of appeals which handed down a ruling on the issue last week and upheld a previous decision of Roy Shelbourne, judge of the U. S. district court.

Judge Shelbourne ruled here in September, 1951, that the theatrical association could deny admission to anyone, because it only leases the amphitheatre from the city of Louisville for a few weeks each year.

Explaining this, he said in part: "Such occupancy is not of a sufficient length of time to interfere with a similar use by other organizations."

This implied that Negroes could use it for their own use when they wanted it.

The ruling [illegible] were in response to a suit filed by James W. Muir, then a Municipal College student. It sought an injunction to prevent the theatrical association from refusing to sell him a ticket.

Attys. Benjamin F. Shobe, Louisville, and Robert L. Carter, New York, represented Muir. They contended the theatrical association was performing a city function.

The Famous Plessy Case

Negroes Rose Up Against Jim Crow as Early as 1891

By JOHN E. ROUSSEAU

NEW ORLEANS—National headlines on the famous Plessy Decision of 1896 on which the South bases its defense in the school segregation cases now being weighed by the U. S. Supreme Court prompted the Courier's research which discloses that the historic case was the result of action by a group of militant New Orleans Negroes to test a Louisiana State law passed in 1890.

A check into old newspapers and records reveals also that the New Orleans Citizens Committee for Annulment of Act III of the Louisiana Legislature of 1890 or "The Separate Car Laws," along with a Negro newspaper, The Crusader, financed the case with a campaign similar to the Courier-NAACP "EE" Fund Drive.

* * *

RECORDS OF the group show that a meeting was held Sept. 1, 1891 in the Crusader office to "resent legally" the Separate Car Law. The committee voted to test the jim crow statute.

Officers and members of the committee were Arthur Esteves, president; former Louisiana Lieut. Gov. C. C. Antoine, vice president; Firmin Christophe, secretary; G. G. Johnson, assistant secretary, and Paul Bonseigneur, treasurer.

Also, Laurent August, R. L. Desdunes, Alcee Labat, Pierre Chevalier, R. B. Baquie, A. J. Giuranovich, E. A. Williams, Atty. L. A. Martinet, N. E. Manion, A. B. Kennedy, Eugene Luscy, L. J. Joubert, M. J. Pinon, Julius Hall, Frank Hall, Noel Bachus, George Geddes and A. E. P. Albert.

* * *

FIRST TO test the law was Prof. Daniel F. Desdunes who, on Feb. 24, 1892, purchased a ticket on the Louisville and Nashville Railroad to Mobile, Ala. He boarded the train at Canal and Wells Streets but refused to go to the coach designated for Negroes.

The conductor had the train stopped at Elysian Fields and North Claiborne Avenue where Capt. Ed Flood of the City Secret Service and Detectives Flotte and Dale arrested Desdunes and removed him to the city jail.

The Citizens' Committee retained James O. Walker, outstanding white New Orleans attorney, to handle the Desdunes Case which had been referred to the Criminal District Court of Orleans Parish.

However, before this case could be heard, another significant incident occurred in Shreveport. District Attorney for the First Judicial District of Caddo Parish filed information against a white conductor for allowing Negroes to occupy seats in the same car with whites.

* * *

THE DESDUNES Case was taken under advisement by Judge R. H. Marr who disappeared in April, 1892, and was called up by his successor, Judge John Ferguson who held that the state law did not apply to interstate travel. He dismissed Desdunes.

It was then that Homer Adolphe Plessy, a mulatto, who was described as ⅞ white and ⅛ Negro, "colored blood not discernable," offered the committee his services to test the law on an interstate level.

Plessy, on June 7, 1892, boarded a passenger train belonging to the East Louisiana Railway Company, in New Orleans going to Covington, La., and refused to enter the coach set aside for Negroes. The conductor, with the aid of a policeman, C. C. Cain, ejected him from the train. He was placed under arrest and taken to the Parish Jail in New Orleans.

* * *

THIS CASE was brought before A. R. Moulin of the Second Recorders' Court who committed it for trial in the Criminal District Court under Docket No. 19,117, with Judge John H. Ferguson presiding.

Information was filed July 20, 1892, and Plessy was arraigned Oct. 10, 1892. The committee then retained services of Attorney Walker, Judge Albion W. Tourgee, Mayville, N. Y.; Atty. L. A. Martinet and the Philips and McKinley law firm, Washington, D. C.

Judge Ferguson's unfavorable decision led to Plessy's filing thirteen points with the State Supreme Court challenging the Separate Car Law. Representing Judge Ferguson and the State was District Attorney Lionel Adams.

* * *

PLESSY, IN HIS plea to the State Supreme Court, contended:

"The statute in question establishes an insidious distinction and discrimination between citizens of the United States, based on race, which is obnoxious to the fundamental principles of national citizenship, perpetuates involuntary servitude, as regards citizens of race, under the pretense of promoting the comforts of passengers on railway trains, and in further respect abridges the privileges and immunities of the citizens of the United States, and the rights secured by the Thirteenth and Fourteenth Amendments to the Federal Constitution."

Louisiana Supreme Court Justice Fenner held that the Thirteenth and Fourteenth Amendments were not violated by the state law, citing in his ruling, the case of Roberts v. Boston, 1849, in which Massachusetts Supreme Court Justice Shaw ruled that separate schools for Negroes were lawful.

* * *

THUS, JUSTICE Fenner ruled in Ex-Parte Plessy, 11,134, on Dec. 19, 1892.

Attorney Walker argued the "Plessy v. Ferguson" case before the United States Supreme Court, April 13, 1896, and on May 18, 1896, the decision was announced by Justice Henry Billings Brown, upholding the Louisiana courts and ruling that the "separate but equal" doctrine was valid if equal facilities were provided for both races.

Concurring in the decision were Chief Justice Melville Weston Fuller, and all other justices except John Marshall Harlan, whose dissent is considered to be a brilliant exposition of democatic law, and Justice David Josiah Brewer who did not participate because of illness. The decision, on record, was 7-1.

* * *

FOLLOWING THE decision, Plessy appeared in Section A, Criminal District Court of New Orleans, before Judge Joshua Baker and pleaded guilty Jan. 11, 1897. He was sentenced to pay a fine of $25 or serve twenty days in jail. The Citizens' Committee paid the fine.

Records show that the committee, through a public appeal, raised $2,982.55. Expenses for all court actions and legal services totaled $2,762.55, leaving a balance of $220. Before dissolving, April 2, 1897, the committee distributed the $220 to the Eye, Ear, Nose and Throat Hospital; Uptown and Downtown units of the Lafon's Old Folks Home, St. John Berchman's Orphan Asylum, Phyllis Wheatley Sanitarium, Indigent Orphans' Institute, Drought Sufferers, the Cuban Committee, and used $60 for a testimonial to Judge Tourgee.

During the past few weeks, the Courier has sought to locate

He Ruled for Plessy

Courier Justice Harlan Stood Alone!

When the U. S. Supreme Court handed down its decision in the famous "Plessy v. Ferguson" case in 1896, upholding the Louisiana courts and ruling that "the separate but equal" doctrine was valid if equal facilities were provided for both races, only one Justice dissented. The dissenting voice was that of Justice John Marshall Harlan, a gifted and uncompromising Southerner. His famous statement, now historic, follows:

"The white race deems itself to be the dominant race in this country. And so it is ... in prestige, in achievements, in education, in wealth and in power.

"So I doubt not, it will continue to be for all time, if it remains true to its great heritage and holds fast to the principles of constitutional liberty. But in the view of the Constitution, in the eyes of the law, there is in this country no superior, dominant ruling class of citizens. There is no caste here. Our Constitution is color-blind, and neither knows nor tolerates classes among citizens.

"In respect to civil rights, all citizens are equal before the law. The humblest is the peer of the most powerful. The law regards man as man, and takes no account of his surroundings or of his color when his civil rights, as guaranteed by the supreme law of the land, are involved.

"It is therefore to be regretted that this high tribunal, the fiinal expositor of the fundamental law of the land, has reached the conclusion that it is competent for a state to regulate the enjoyment by citizens of their civil rights, solely upon the basis of race."

Southern Railway changes dining car segregation rules

WASHINGTON, Nov. 14—(AP)—The Justice Department said Friday a race segregation suit in which it had joined against the Southern Railway had been dropped, following its notification by the railway of a change in rules for seating Negroes and white in dining cars.

The suit had been brought by Elmer W. Henderson, a Washington Negro.

Atty. Gen. Brownell said he was informed by Southern that the new rules, superseding all previous ones, have been issued as a circular to conductors and dining car stewards throughout the system. They provide for filling vacant dining car seats in the order of entrance into the car.

Henderson has prosecuted litigation against the railroad for more than 10 years, starting with a complaint that he was denied dining car service on the Southern in May, 1942.

That case went up to the Supreme Court, which ruled out dining car racial segregation.

The Justice Department announcement Friday noted that the Southern at one time set up curtains or partitions in its dining cars to divide white and Negro patrons, a practice which was specifically challenged by Henderson.

Although the Interstate Commerce Commission had approved this plan, the Justice Department which ordinarily is the legal representative of government agencies, intervened on Henderson's side.

The Department said the order requires its dining-car stewards to seat patrons at vacant seats in the order they enter the diner—presumably without regard to whether they are Negroes or whites.

Upon receipt of the new rules, the Department said, the Government and Elmer W. Henderson, a Negro, withdrew a suit in Federal Court here to compel the railroad to change its seating rules.

Once Set Up Partitions

Withdrawal of the suit ended a court case that began more than 11 years ago.

The Justice Department noted that the Southern at one time set up curtains or partitions in its dining cars to divide white and Negro patrons, a practice that was specifically challenged by Henderson.

Although the Interstate Commerce Commission had approved this plan, the Justice Department, which ordinarily is the legal representative of Government agencies, intervened on Henderson's side.

After a Supreme Court mandate which ruled out dining-car segregation, the I.C.C. approved revised rules on the Southern. These rules provided that patrons be seated in groups, "women with women, men with men, Negroes with Negroes, and whites and whites," with the seating of whites and Negroes starting from opposite ends of the car.

This plan was also challenged by Henderson. The Justice Department joined Henderson in asking that the railroad be enjoined from carrying out any "discriminatory arrangements."

Railway Ends Segregation On Diners

Southern Orders First Come, First Served

From Wire Dispatches

Washington, Nov. 13.—The Justice Department said today the Southern Railway System has issued a strict no-segregation, no-discrimination order for service to patrons in its dining cars.

Washington Cafes Open Doors to All Races!

Restaurant Jim Crow Outlawed by High Court

WASHINGTON—Restaurant jim-crow was outlawed in the nation's capital Monday of last week by the United States Supreme Court. The vote was unanimous, 8 to 0. Justice Douglas delivered the opinion. Justice Jackson took no part in the consideration of the case.

Two days after the decision was handed down, all eating places here began serving all well-behaved persons regardless of race.

The District of Columbia was the petitioner in the case and the John R. Thompson Restaurant Company was the plaintiff. The Thompson Restaurant Company is one of the largest chains in the East.

THE CASE hinged around the so-called "Lost Laws of 1872 and 1873" which forbade discrimination because of race in public places.

Lawyers for the restaurant said the laws were no longer enforceable and attempted to prove they had been abandoned.

The restaurant said one laws were abandoned or repealed as a result of non-use and administrative practice.

Lower courts had agreed.

* * *

BUT MONDAY the Supreme Court said it did not agree with the last lower court decision. "The failure of the Executive Branch to enforce a law does not result in its nullification or repeal," said the court.

"The repeal of laws is a legislative function just as their enaction.

"Congress has had the power to repeal the 1872 and 1873 acts from the dates of their passage by the Legislative Assembly. But, as we have seen, it has not done so."

The court ordered that from henceforth on that Negroes in restaurants be neither segregated nor discriminated against.

MRS. MARY CHURCH TERRELL
. . . happy over it all

Attorney General Herbert Brownell filed a breach in behalf of the Negro fight soon after Eisenhower was inaugurated.

THIS FIGHT has been waged for years under the leadership of the Courier, NAACP, the Local Committee for the Enforcement of the "Lost Law," whose president is Mrs. Mary Church Terrell.

THE TEST case originated in July, 1950, when a restaurant operated by the John R. Thompson Company, Inc., Fourteenth Street near New York Avenue, N. W., refused service to Negroes.

The District Government, later supported by the Justice Department asked the Supreme Court last February to outlaw racial segregation in Washington restaurants. District officials also asked the High Court for a ruling that would clarify legal aspects of home rule.

In fact, Chairman Case of the Senate District Committee, delighted with news of the ruling, said he planned to call an early meeting of his committee to act on the long-pending District Home Rule Bill. This calls for the election of a city council with a Presidentially appointed Mayor, to legislate on city matters, subject to amendment or repeal by Congress.

Mrs. Mary Church Terrell said:

"As chairman of the coordinating committee for the Enforcement of the D. C. Anti-Discrimination Laws, and as one of the persons who under the sponsorship of the committee helped launch the Thompson restaurant case, I wish to express my satisfaction with the Supreme Court decision."

The Rev. W. E. Jernagin, who is national president of the Sunday School Union and BTU of the National Baptist Convention, USA, Inc., commented, "It was a wonderful decision. It will mean so much to the American Negro who has been working so long under a handicap. It is also heartening to the Negro youth of America."

Clarence Mitchell, director of the Washington Bureau of the NAACP, said that "the victory in the restaurant case is a tribute to the hard work of Mrs. Mary Church Terrell and the late Charles Houston. Mr. Houston resurrected the laws and Mrs. Terrell gave them life."

Restaurants Heed Law

Negroes Served—Capital Survives

By James E. Warner

WASHINGTON.

This city, which used to be an overgrown Southern town, passed its first week with no racial segregation in restaurants and bars with the dignified aplomb befitting its status as a world capital.

The first few days of operation under a United States Supreme Court ruling that an 1873 law requiring all public places to serve any well behaved person, including colored, dispelled the misgivings expressed by those who feared "incidents" in a city formerly accustomed to almost complete racial segregation.

Not a single Negro sought admission to the swank Mayflower and Shoreham cocktail lounges and night clubs up to Friday evening. Smaller hotels—the question of segregation in the renting of hotel rooms still is before the courts—reported no difficulty with members of either race on account of the few Negroes who sought, and obtained, service in their restaurants.

10 on First Day

A spot check of fifty restaurants on the first day of the new order by the Washington Restaurant Association showed only ten Negroes had taken advantage of their new-found privilege to visit—and be served in—formerly strictly white restaurants.

John S. Cockrell, executive secretary of the group, reported that further checks showed a slowly increasing number of Negroes visiting the Capital's 2,500 restaurants of all price ranges and being served without fanfare and without causing white patrons to leave.

Bourbon Dawes, executive secretary of the Hotel Association of Washington, said "we see almost no change from our normal procedure: there certainly have been no incidents of any kind."

"There has been nothing noticeable at all," said a Statler Hotel executive. "Of course, we have been serving Negroes under our own non-segregation policy ever since the Washington Statler was opened."

State Dept. Relieved

Happier than almost any one else about the Supreme Court ruling were those officials of the State Department who have the duty of arranging sleeping and eating accommodations for visiting diplomats and official parties of all nationalities, including various colors. Formerly, discreet advance arrangements had to be made to make certain there would be no embarrassment to the visitors through rudeness or refusal of service in restaurants which held to a segregation policy. Actually, through gradual relaxation of segregation restrictions in government cafeterias and in public eating places, the capital had come a long way from the day twenty-five years ago when a parched Negro on a sweltering day was refused service at a segregated soda fountain.

For some years, most "white" downtown drugstores had been serving Negroes drinks and food "to go out," and some permitted them to sit and eat at their counters. Some, however, did not until last week's court ruling.

EDUCATION
PUBLIC SCHOOLS

Drama Walked Hand-in-Hand With Justice During Cases

PRESIDENT EISENHOWER AND MEMBERS OF U. S. SUPREME COURT

WASHINGTON—Drama . . . stark, naked polgnant, compelling . . . stalked hand in hand with justice last week as the most celebrated cases in the history of this nation since the Dred Scott decision, were argued before the U. S. Supreme Court.

Now that the excitement has subsided, here are some random observations for Courier readers . . . intended to give them a birds-eye look-see of events when . . . and how . . . they occurred.

* * *

FOR INSTANCE, it is highly significant to note that headquarters for NAACP lawyers was at the fabulous Sheraton Park Hotel, Connecticut Avenue . . . Suite 400 . . . six rooms, which included two bedrooms, living room, dining room, kitchen, solarium, two baths. Lights burned until the wee hours every morning. Some years ago, this same hotel . . . then the Wardeman Park . . . refused to let Dr. Ralph Bunche appear as guest speaker.

* * *

PLEASING to Negro Americans was the fact that Chief Justice Earl Warren sat in on the cases . . . and did not excuse himself, as some insiders thought might happen. All the justices took part in questioning at various times, with the exception of Justices Tom Clark and Sherman Minton. Justice Black was silent until the D. C. cases . . . and then he asked a number of questions. Justices Frankfurter, Reed and Jackson asked the most questions.

* * *

BESIDES BRIEFS filed by the NAACP and the Department of Justice . . . were others filed by the Amvets (they couldn't understand fox-hole equality and educational separation) and one filed by the CIO. Lawyers who know insist that the Brownell brief was the finest ever presented in a civil rights case.

* * *

BATTLE OF THE GOLIATHS was the rapier-like word-duel Monday afternoon as Thurgood Marshall (Mr. Civil Rights)

U. S. SUPREME COURT BUILDING
"Equal Justice Under Law"

locked horns with 82-year-old John W. Davis, leader of the American bar. Davis, who ran for President on the Democratic ticket back in 1924, was the master . . . but in Marshall met a foeman worthy of his steel.

'Tis hinted that Davis was paid more than $175,000 for defending the South's separation position. Marshall, as legal head of the NAACP, earns $12,000 yearly.

* * *

MOST DISGUSTING spectacle of three-day session was inability of T. Justin Moore, representing the Prince Edward County (Va.) School Board to pronounce the word NEGRO. Mr. Justin insulted the court and spectators by using the word "Nigra" sixteen times during his twenty-minute talk Monday afternoon. Twice he used the word COLORED. Negro voters of his state should remember this, if he runs for public office.

* * *

MONDAY'S TENSENESS reflected itself from the bench and throughout the courtroom. That this was one of the most important cases in the nation's history just couldn't be denied. Even Thurgood failed to be as effective Monday as he usually is. But Tuesday . . . he had EVERYTHING. He disposed of Davis' arguments in a biting, tongue-lashing presentation which had the courtroom literally holding its breath.

As only Marshall could put it . . . he put the issue directly up to the Supreme Court.

* * *

SOUTHERN STATES shot their bolt with the speech of Davis. Others who defended school segregation were anti-climatic . . . and this was easily understandable because it seemed to these reporters

J. LEE RANKIN . . . DEPT. OF JUSTICE
Correct in morning attire . . . he stated Government's position

that they were fighting a losing cause . . . and that their position was out of step with the times, sectionally . . . nationally . . . internationally!

* * *

ONE OF THE dramatic highlights of the hearings came Tuesday afternoon when J. Lee Rankin, representing the Department of Justice, told the Supreme Court the position of the Government concerning school segregation.

"You not only have the power, but it is your duty to outlaw school segregation as a violation of the Fourteenth Amendment," he told the Supreme Court.

Attired in winged collar, striped trousers, morning coat, the Nebraskan made a powerful presentation. Questioned repeatedly by the bench, he refused to yield an inch from the Government's position, as stated in its brief.

* * *

'TIS RUMORED that this marked Rankin's first appearance in court. If so, his knowledge of law and his deep sense of responsibility in doing the job as the administration wanted it done left nothing to the imagination. And

ALMOND, DAVIS, MOORE
Represented the "Opposition"

what he said were not the words of Mr. Rankin. His was the official voice of the U. S. Government . . . and you had to feel proud that your Government took the position it did about ALL of its citizens. Rankin, we understand, had specifically asked, when he came into the department, to work on civil rights cases. What a job he's done!

* * *

SPEAKING FOR OUR SIDE during the sessions . . . Spottswood Robinson, Thurgood Marshall, Robert Carter, George Hayes, James Nabrit, Jack Greenberg.

On the other side: John W. Davis (South Carolina and Virginia), T. Justin Moore, J. Lindsay Almond, Attorney General for Virginia; Paul Wilson, Attorney General for Kansas; Milton Korman, assistant corporation counsel, District of Columbia, and W. Albert Young, Attorney General, Delaware.

* * *

MOST WARM-HEARTED and human lawyer appearing before Supreme Court . . . was Jim Nabrit, law professor of Howard University. Freckle-faced Jim, with the Dixie accent and ingratiating personality, figuratively wrapped his arms around the justices as he talked with a combination of legal brilliance, home-spun philosophy and searching analysis. During several bits of legalistic repartee, Nabrit's sense of humor relaxed not only the court but the audience. His quips and amazing command were refreshing and pointed.

* * *

SUAVEST LAWYERS in court were Davis, Robinson, Hayes. Most dynamic was Marshall. Most caustic was Almond. Most persuasive . . . Nabrit. Most bombastic . . . Korman. Most insulting . . . Moore. And in addition to Rankin . . . Davis and Korman also wore formal morning attire. Our lawyers satisfied themselves by wearing conservative business suits.

* * *

UNFORGETTABLE quotations heard during the sessions:

DAVIS: "The best is often the enemy of the good." Mr. Davis was apparently referring to the fact that Negroes should be

NABRIT AND HAYES

They argued D. C. cases

satisfied with segregation, provided it is equal.

MOORE: "If there should be this unhappy, unfortunate decree (outlawing segregation) the court should remand the methods of carrying out the transition to the lower courts."

HAYES: "The laws passed by Congress appropriating money for Negro schools did not establish segregation. Segregation here (in D. C.) is voluntary, not mandatory. Negroes, however, find themselves faced with compulsory segregation without sanction of law."

RANKIN: "The pervading purpose of the Fourteenth Amendment was to establish the equality of all men. No distinction can ever be made on the basis of race or color. If there was anything the amendment tried to do, it was to make this plain."

NABRIT: "All this court needs to do is to rule that that statutes (upon which jim-crow schools in the District are allowed) do not compel segregation. And that's all there is to it."

FRANKFURTER: "Is legislation by Congress, like the British Empire, something that is acquired in a fit of absent-mindedness?"

MARSHALL: "The question here is whether the wishes of the state shall prevail, or whether our Constitution shall prevail."

* * *

OF MAJOR SIGNIFICANCE was the fact that the position of the Eisenhower Administration was made so remarkably clear on the issue of segregation. It was referred to by Rankin . . . by Korman . . . by Nabrit.

In fact, Korman admitted that the Eisenhower program is admittedly committed to abolish segregation wherever it feels that it has the power to do so. The position of the D. C. Board of Education regarding segregation is not known. Some are for it. Others oppose it vigorously. However, everyone wants the U. S. Supreme Court to make a ruling . . . so that the case can be settled once and for all.

Segregation Cases . . . At a Glance!

NAACP Position!

1—The main point at issue in all these cases was whether segregation in public schools per se . . . is a violation of the Fourteenth Amendment.

2—The U. S., through Attorney General Herbert Brownell, threw its weight on the side of Negroes in a powerful brief, supported by oral arguments of Assistant Attorney General J. Lee Rankin.

3—No effort was made to show that facilities in colored schools, involved in these suits, were inferior to white schools. In previous segregation cases, the basic approach has been to show that facilities in colored schools were inferior to those in white schools.

4—A stipulation by counsel to these proceedings, stated that it was admitted for the purpose of these suits that facilities are equal. This was done, so that the Supreme Court could pass directly on the doctrine that segregation is legal, so long as equal facilities exist. Thus was the road cleared to challenge Plessy v. Ferguson, decided in 1896 on the basis of "Separate but Equal" . . . and followed by the courts ever since.

5—NAACP counsel alleged that segregation based on race alone, is a violation of the due process and equal protection clauses of the Fourteenth Amendment.

6—The courts not only had the power to outlaw segregation; it was its duty to do so.

7—That the Fourteenth Amendment was specifically enacted to strike down the infamous "Black Codes," passed in most Southern states after Negroes were liberated from slavery. These "Black Codes" created all sorts of racial barriers against Negroes.

8—That the Government, in enacting the Fourteenth Amendment, and the states, in ratifying it, understood that it prohibited segregation in public schools.

9—The Washington D. C. case differs from the others being based on the Fifth Amendment . . . since the Nation's Capital is governed by the Federal Government.

10—That the D. C. School Board is willing to prohibit segregation in public schools, if it has the legal power to do so.

11—That the court should make the order declaring segregation in graded schools to be illegal, and leave it to the states to comply. There should not be any specific terms or a program given to offending states.

12—That the transition from segregation to integration should not take more than ONE YEAR.

States' Position!

1—The doctrine of "Separate But Equal" has been followed by the courts since 1896, and is therefore binding on the Supreme Court.

2—That the Fourteenth Amendment excludes three classes of rights from its provisions. In addition to public schools, the right to vote was also excluded, necessitating the Fifteenth Amendment.

3—That the Fourteenth Amendment does not prohibit segregation in public schools, and leaves the matter entirely up to the states.

4—That a number of civil rights statutes enacted by Congress, beginning in 1866 and ending in 1875, showed it was not believed by Congress of that day, that segregation was prohibited by the Fourteenth Amendment.

5—That the states, in ratifying the Fourteenth Amendment, did not believe it prohibited segregation in public schools.

7—That public education is not a right. A state need not have a public school system. All that is required is to give equal facilities to all.

8—That public education is a state and not a Federal case, and must therefore be left to the judgment and discretion of the respective states.

9—That segregation is the best way to handle delicate social problems. This method is best for Negroes . . . and best for whites.

10—That dire consequences will result if segregation in the public schools is wiped out in the South.

— RIGGERT

Current Furor Over Issue of Segregation In Schools Likely To Go on for A Long While

Some Foresee Many Years Of Litigation

By DOUGLAS B. CORNELL
Associated Press Staff Writer

Washington, Dec. 17—Lawyers have ended their arguments and the Supreme Court is pondering, but the furor over the issue of separate public schools for Negroes and whites seems likely to go on and on.

At least one Supreme Court justice apparently thinks that if the court outlaws racial segregation in the schools the decision won't by any means close out the issue automatically.

"I foresee," said Justice Jackson, "a generation of litigation."

Jackson did that bit of crystal-ball gazing in the midst of three days of reargument on whether segregation violates the Constitution. He referred to the possibility of a whole series of new lawsuits if some counties or school districts balk at mixed schools or officials resign rather than accept them.

The entire Supreme Court obviously is concerned about the mechanics, if not the actual social impact, involved in putting a decision against segregation into effect.

So are the 17 Southern and Border states that would be most affected. All of them, through their State constitutions or laws or both, have compulsory racial separation in their school systems. Something like two-thirds of the nation's Negroes and more than 12 million school children of both races live in these states.

Deep in Dixie, some states are showing little inclination to let Negro and white children sit side by side in classrooms regardless of what the Supreme Court does in a decision that may be months away.

South Carolina, Georgia, and Mississippi already have taken preliminary steps to do away with their public schools so as to bypass a possible ruling against segregation. In each instance a change in the State Constitution is required.

But they are figuring on continuing to appropriate money for educating children, perhaps to be used for scholarships or payments to parents who would hand it over to whoever runs the schools.

Who would that be? Churches, private individuals or organizations, educational foundations?

Those are questions still in the air at this point.

Some states have indicated a willingness to go along with whatever the Supreme Court decides. Governor William C. Marland, for example, has said West Virginia will "abide by the decision" if segregation in invalidated.

Yet, even then, an end to segregation would raise administrative problems, such as faculty readjustments and assignments and reorganization of school districts.

Governor James F. Byrnes of South Carolina is on record as saying:

"South Carolina will not, now nor for some years to come, mix white and colored children in our schools."

Governor Herman E. Talmadge of Georgia contends a ruling that segregation is unconstitutional would be "a major step toward national suiside," a "political decision" that would bring on "the most foolhardy sociological calamity in our national history."

The Eisenhower Administration, in its brief in the segregation cases, said recent years have seen an ever-increasing trend toward elimination of racial segregation in all fields and in all parts of the country.

"In almost every instance," it said, "this progress has been accomplished without disorder or friction."

Many Southerners contend there won't be any disorder or friction in Dixie, either, if they are allowed to handle the segregation problem in their own way. The Southern states, they say, already have provided school facilities for Negroes equal to those for white or are well on the way toward equalization.

They are counting on the Supreme Court to stand by its half-century-old doctrine that segregation is constitutional if Negroes have equal facilities.

But attorneys for Negro parents, and Assistant Attorney General J. Lee Rankin for the Eisenhower Administration, told the Supreme Court that segregation in itself is unconstitutional, regardless of whether Negro schools are as good as those for whites.

Right there is the crux of the massive problem before the court: Whether to reaffirm the "separate-but-equal" doctrine of 1896 or toss it aside and say segregation under any conditions violates the Constitution.

Directly involved in the cases the justices now are weighing are Virginia, South Carolina, Delaware, Kansas, and the District of Columbia. Kansas, like Wyoming and New Mexico, permits, but does not not require, segregation in schools.

The court heard three days of arguments on the cases a year ago, but not enough to let it reach a decision. So it asked for reargruments and called on rival attorneys to cover several specific questions in new briefs and arguments.

It was these questions, along with those the justices personally asked in court, that demonstrated their concern, not alone with what decision they should hand down but also with the impact of the decision.

In the main, they wanted to know:

1. Whether Congress and the states intended to ban school segregation when they put through the 14th Amendment to the Constitution soon after the Civil War. The amendment was designed to reinforce the rights of freed slaves. It says no state shall deprive any person of due process or equal rights under the laws.

2. Whether the Supreme Court has the power to interpret the 14th amendment as abolishing segregation.

3. Whether the court, in the event it can and does rule against segregation, should permit no delay or allow a "gradual adjustment."

4. Whether, if the court bans segregation, it should issue detailed decrees, turn the matter over to a special master who would hear evidence and make recommendations to it, or place the problem in the hands of lower courts.

Attorneys for Negro parents, captained by legal experts of the National Association for The Advancement of Colored People, argued that certainly the framers of the 14th Amendment intended to outlaw school segregation.

They said the court has the power and duty to abolish separate schools and segregation should end at the start of the next school term after the Supreme Court acts, or at most at the end of the one full school year.

Lawyers for the states argued that certainly Congress and the ratifying states had no intention of abolishing segregation, that racial separation in the schools is entirely constitutional as long as equal facilities are provided for both races.

Furthermore, they said, the Supreme Court lacks the power to eliminate segregation and the matter should be left to the states and their legislatures as they said Congress contemplated.

If the court does rule against segregation, they said, then a gradual adjustment should be allowed and details should be left to the lower courts.

The Justice Department took a middle ground on the intent of Congress and the states. It said history is inconclusive on that.

But it sided with the Negroes in arguing that segregation under any circumstances violates the Constitution and that the Supreme Court has the power and duty so to rule.

In the event of such a ruling, it suggested that the cases be sent back to the lower courts with directions to carry out the decision "as speedily as the particular circumstances permit."

COVERING WASHINGTON

By Alice A. Dunnigan for ANP

SUPREME COURT BURSTING AT SEAMS

There was no such thing as "Covering Washington" last week as the greatest portion of the reporters' time was spent Covering Capitol Hill. The eyes of the nation and the world were focused on the United States Supreme Court where the greatest history making episode since the Dred Scott decision was taking place.

The quiet court chamber, with its marbel Ionic column, its high coiffered ceiling, its red velvet drapes and red carpeted floor was filled to capacity during the entire three-day arguments on segregation in the public schools of the nation.

The 150 spectators' seats were taken each day as soon as the doors of the inner chamber were opened, leaving hundreds interested persons standing in the corridor awaiting their turns to get a glimpse of the nine blackrobed, sover-faced justices as they listened attentively to discus-

sions pro and con by some of the nation's leading attorneys on the validity of segregation in education.

Oklahoma City, Okla.

Spectators began lining up outside of the Supreme Court building around 1:30 a. m. Monday with Arthur J. Smith of Baltimore and Leon Holt of Las Vegas being among the early arrivals. Around 4:30 a. m. several others had joined the line and waited patiently until the doors of the building were opened at 9:00. The line then formed inside the cooridor where it continued to wait until the doors of the inner chamber were finally opened.

When the court went in session at 12:00 noon every section was bursting at the seams with interested individuals. The 150 seats reserved for lawyers in a choise section of the court room were all taken, and every possible inch in the several press boxes was occupied by local and visiting members of the fourth estate. Many of these reporters found it necessary to stand in the outer aisle. Newspaper reporters as well as attorneys were here from every section of the country to witness history in the making.

Sat. 12-26-53

The arguments were opened with a consolidation of the two most controversal cases, the one origination in South Carolina and the one in Virginia.

SOUTHERNERS SLURS WORD "NEGRO"

When T. Justice Moore, Sr. pleaded for continued segregation in the schools on behalf of Prince Edward County, he declared that a child psychiartrist had proclaimed that integration of white and "niggre" children would increase an anxiety which would be detrimental to both races.

The Virginian's southern pronounciation of the word "Negro" sounded so nearly like the much hated epithet that Negro lawyers, spectators and reporters cringed each time the slurred reference was made of their race.

Continuing his argument, Tuesday, Moore reemphasized the early attempts of congress to enact civil rights legislation. He listed six measures which were passed by early congresses to provide civil rights for Negroes. He began with Freedom's bill which was the first to provide for public schools for "niggres."

Next he named the civil rights act of 1866. This bill specifically omitted three rights which were not considered civil rights, claimed Moore. They were the right to vote; the right to interracial marriages (nigges" marrying white women or the other way around); and mixed schools.

He next named the 14th Amendment to the constitution, cited two other measures, and finally referred to the civil rights act of 1875. This was congress's last effort, he said, to write into the civil rights bills provisions calling for the abolition of segregation in schools, churches, theatres and cemeteries. This vain effort, he continued, resulted in approximately 100 representatives, who fought for its passage, losing their seats in the house.

VETERAN ATTORNEY SHEDS CROCODILE TEARS

In an effort to defend segregation in the public schools of South Carolina, John W. Davis, a famous Constitution lawyer of New York, made his usual attempt to play on the sympathy or emotion of the justices.

The venerable, white haired attorney, who has passed the fourscore mark, broke down and wept while he contended that the "happiness, progress and welfare of the children South Carolina can best be promoted in segregated schools."

Davis, who was a candidate for President of the United States back in 1924 declared that here are 2,799 Negro children registered in Clarendon County, S. C. as compared with only 295 whites.

If these children are consorted or mixed, he said, this would mean that in every 30-pupil classroom there will be 27 Negro children to every three whites.

"Would the colored children be any happier if they have three white children sitting around in the room with them?" he asked. "Would they learn any more quickly, or would they be helped psychologically?"

Moore compared the Negroes' fight for integration with Esop's fable of the dog with the bone who saw his reflection in the water and thought it was another dog with a bigger bone. He lost the substance as well as the shadow, said Moore. Here, he continued is a group of people who have equal education at the present, but is willing to throw it away for something called prestige.

Then pulling out his handkerchief and dabbing his eyes, he concluded with the old maxim that "the best is often the enemy of the good."

ORATORY ON NEGRO PROGRESS

In a brief 15-minute review, Lindsey Almond, attorney general of Virginia, burst forth in a flood of oratory as he talked about how the colored man has risen from the dark days of slavery by the love and respect of the white man of the South. From his blustering oratory he calmed down to a quiet, almost pleading voice as he told the justices about the $75,000,000 which Virginia had spent in the last 15 years to improve the facilities of its public schools. In an almost humble manner he inquired whether the southern states would have to maintain one school system or three.

This comment was construed as meaning that if the Supreme court forced upon them one integrated school system, the South would be compelled to maintain three system, one would be the forced public integrated system, and the others private operated jimcrow schools.

STATE ATTORNEYS PERMITTED TO PRACTICE BEFORE HIGH COURT

Many of the out-of town lawyers attending the school hearing took advantage of their visit to Washington by seeking admission themselves to practice before the highest court of the land.

Among the approximately 40 attorneys admitted to the Supreme court during the three day stint, five were Negroes.

On Monday, state sen. Robert L. Brokeburr of Indianapolis, Ind., was presented to the Supreme court by Perry Howard, national Republican committeeman from Mississippi. Carl R. Johnson of Kansas City, Mo., and Lawrence R. Bailey of New York were presented to the high tribunal by Thurgood Marshall, chief counsel for the NAACP.

On Tuesday Miss Delia E. Phillips of Detroit, Mich., was presented by George Johnson, dean of the Law School of Howard university.

Wednesday, J. F. McClellon of Nashville, Tenn., was admitted to practice before the Supreme court upon the recommendation of Atty. Alexander Looby, instructor of Commercial law, Tennessee state university.

Davis Challenges Court's Authority To Mix Schools

By DARRELL GARWOOD

WASHINGTON, Dec. 7 (AP)—Famed constitutional lawyer John W. Davis told the U. S. Supreme Court today that neither the high tribunal nor Congress has the power to outlaw racial segregation in public schools.

The 80-year-old Davis, Democratic presidential nominee, climaxed the first day of final arguments on the segregation issue with an attack on the Federal Government's position against separate schools for Negroes and whites as "lame and impotent."

He was opposed by Thurgood Marshall, an official of the National Association for the Advancement of Colored People, who asserted that the issue before the court was whether the "archaic customs of the South" or the "avowed intent of our Constitution" shall prevail.

GOVERNMENT'S CASE

The historic debate continues Tuesday, when Asst. Atty. Gen. J. Lee Rankin is expected to present the government's case in support of the petitioners demanding that segregation be ended by Supreme Court decree.

Spectators who had lined up as early as 3 a.m. for the 50 seats available to the public in the ornate courtroom and a galaxy of distinguished lawyers listened intently as the great constitutional debate raged.

Chief Justice Earl Warren, presiding for the first time in such a momentous case, was flanked by all eight associate justices, most of whom peppered the opposing counsel with sharp questions.

NO "SACKCLOTH, ASHES"

The vigor of Davis' argument belied his years. The frock-coated lawyer, representing South Carolina, told the court that the state did not come before the justices "in sackcloth and ashes." He cried: "It believes its legislation is not offensive to the Constitution of the United States. It is confident of its good faith and intentions to provide equal schools for its children."

Davis said neither the Supreme Court nor Congress has the power to order Negro and white children to be "re-assorted or comingled in public schools."

If the court decides differently, Davis declared, the results "would not be pleasing."

If schools are to be re-assorted, Davis asked the court, who is to know on what basis it will be done? On a mathematical basis of 30 pupils per room, he said, that could mean 27 Negro pupils and three white in South Carolina.

"Would that make a child happy?" he inquired. "Would it learn better? Would life be more serene?"

Would the "terrible psychological handicap" for Negro children, of which their elders complain, be removed, Davis asked, by having three white children in the same room?

"GLORIFIED BOARD"

"This honored court," he said in a 59-minute argument, "cannot sit as a glorified board of education for South Carolina or any other state. It cannot sit in the chair of the Legislature of South Carolina and mould its educational system."

Davis said he did not question the "sincerity" of Negroes and those who joined them in the fight against segregation.

But he said the 14th Amendment to the Constitution, guaranteeing equal rights regardless of

ARGUES SEGREGATION
John W. Davis

race, color or creed, "could not possibly confer on either Congress or the courts" the power to render illegal the system of separate but equal school facilities.

Marshall asserted that separate schools for Negroes are a survival of the so-called "black codes" of the South which were outlawed when the 14th Amendment was enacted just after the War Between the States.

"CLASS LEGISLATION"

The Negro attorney said: "The 14th Amendment plainly was intended to abolish all types of class legislation. School segregation on its very face involves class legislation."

T. Justice Moore of Richmond argued in support of Virginia's separate school system.

But he said that if the Supreme Court comes to the "unhappy, unfortunate" conclusion that segregation is unconstitutional, it should provide for "a gradual adjustment."

Spottswood Robinson III of Richmond opened the argument for foes of segregation.

Robinson, a Negro, told the court that the post-war Republican-controlled Congress of 1866 "desired and intended" to abolish separate school systems when it wrote the 14th Amendment into the Constitution.

"EQUAL PROTECTION"

Marshall and Robinson contended that "equal protection of the law" promised by the 14th Amendment to all citizens is, of itself, enough to outlaw segregation.

Davis called this fallacious, declaring the Negro position assumes the "abolitionist crusade" before the War Between the States was directed against public school segregation as well as slavery.

The crusade "was directed at one thing only—abolition of slavery," he said.

Davis said Atty. Gen. Brownell fell into the same "fallacy" in the government brief supporting the NAACP case.

Brownell had argued that the record is not clear on whether the 39th Congress in 1866 expressly intended the 14th Amendment to outlaw school segregation. But he said the intent was to get rid of all laws based on race. Davis called this "a lame and impotent conclusion."

21 STATES, D.C.

Twenty-one states and the District of Columbia are involved in the controversy. Segregation is mandatory under state law in 17 Southern and border states and is a matter of local option in Kansas, New Mexico, Arizona and Wyoming.

Robinson centered his argument in replies to two questions asked from the bench in relation to the 14th Amendment.

The questions were: "Did Congress intend the legislation it enacted just after the war to abolish segregation? Did the legislators of that era believe that the courts eventually would outlaw segregation if the states did not?"

ANSWERS "YES"

Robinson answered "yes" to both questions.

He declared: "Congress imposed on the courts a positive duty to determine whether racial segregation in public education is valid." He cited congressional debates of nearly 90 years ago as proof that members of the House and the Senate knew they were acting to end segregation.

Robinson said: "All evidence shows that representatives in the

EDUCATION
PUBLIC SCHOOLS

39th Congress desired and intended that the 14th Amendment should invalidate the existing 'black codes' and any and all legislation that might arise in the future."

The lawyer said these discussions of the problem took place after a number of states enacted legislation restricting the movement and actions of Negroes after the War Between the States.

To provide equality for all people, he asserted, the Congress moved against "all class legislation" such as the black codes and other statutes.

Delay school cases

WASHINGTON

The U.S. Supreme Court Monday postponed hearings in the school segregation cases indefinitely.

Most observers expressed belief that the postponement would not affect the school cases. No one expected the court to order the schools desegregation before September, 1955.

Because of the death of Justice Robert Jackson, the Supreme Court now has only eight members.

The United States Senate refused to consider President Eisenhower's nomination of Judge John M. Harlan, 2nd to fill the vacancy until next January.

THE SUPREME Court's postponement is interpreted as a counter move to that of the southern senators who are holding up the Harlan nomination.

The High Court is expected to recess until January 31, 1955.

THE POSTPONEMENT can also be taken as evidence that the high court thinks this case of such importance that it ought not to face the possibility of a tie vote.

The court's rulings as to whether desegregation shall be immediate or gradual will probably come by unanimous vote as it did last May 17.

However there are many minor points to be settled before arriving at the main decision where a full court of nine members is necessary.

ONLY SIX LETTERS objecting to Judge Harlan's nomination have been received.

The writers opposed Mr. Harlan because he studied at Oxford University in England.

They were also critical of his membership in Atlantic Union. which fosters better relations among nations facing the Atlantic Ocean. Former Justice Owens Roberts is president of the Atlantic Union.

The third objection was that he lacked long judicial experience.

Harlan is the grandson of Justice John Marshall Harlan I, who opposed segregation in the Plessy vs. Ferguson case 58 years ago.

FINAL FIGHT OPENS IN SUPREME COURT ON BIAS IN SCHOOLS

Prominent Attorneys Argue on Power to End Segregation Under 14th Amendment

Special to THE NEW YORK TIMES.

WASHINGTON, Dec. 7 — The final battle to outlaw racial segregation in public schools everywhere in the United States began in the Supreme Court today.

The court was told by Thurgood Marshall and Spottswood W. Robinson 3d, principal lawyers for the Negro groups that are attacking segregation, that it had not only the power but the duty to ban the practice in all schools of the land.

John W. Davis, 80 years old, the noted attorney and expert on constitutional law, replied that it was "not within the judicial power" to set aside "on a sociological basis" a system that "has stood legally for three-quarters of a century."

Mr. Davis appeared for the States of South Carolina and Virginia. He said that it had not been the intent of Congress in adopting the Fourteenth Amendment to the Constitution in 1866, or the understanding of the states in ratifying it in 1868, that it would at that time or in the future be used to outlaw segregation in the schools.

Messrs. Marshall and Robinson, specifically representing the National Association for the Advancement of Colored People, contended that segregation was unconstitutional on its face and that Congress had intended the Fourteenth Amendment to abolish it "as a last vestige of slavery."

Decision Due in Spring

They also argued that it was clear that the states in ratifying the amendment had had this in mind, too.

The amendment prohibits any state from making or enforcing any law that would abridge the privileges or immunities of citizens of the United States. Segregation laws of South Carolina, Virginia, Kansas and Delaware are under attack in the Supreme Court as violating this amendment.

A fifth case, involving the District of Columbia, has been brought under the Fifth Amendment, which forbids depriving any person of life, liberty or property without due process of law.

The South Carolina and Virginia cases were consolidated and four hours allowed for arguments, which began today. Arguments in all the cases will be completed Wednesday afternoon and the court will take them under advisement. A decision is not expected until the spring.

Whatever ruling the court hands down will affect about 10,000,000 white school children and 2,500,000 Negro children in seventeen states and the District of Columbia. Segregation is mandatory in Alabama, Arkansas, Delaware, Florida, Mississippi, Missouri, North Carolina, Oklahoma, Georgia, Kentucky, Louisiana, Maryland, South Carolina, Tennessee, Texas, Virginia, West Virginia and the District. In several other states, including Kansas, segregation is permitted under local option.

The court room was filled to capacity when the nine justices came on the bench at noon. Persons lined-up in the corridors outside the courtroom, hoping for a chance to get in. The crowds outside the doors, however, were estimated to be smaller than a year ago when the cases were first argued.

In ordering the issues reargued at this term, the court had asked that five specific questions, dealing principally with the intent of Congress and with the court's own powers, be discussed. Most of today's arguments were addressed to these questions.

On the court's first question, whether Congress had intended the Fourteenth Amendment to abolish school segregation, Mr. Robinson was the first to argue that it said that the amendment had envisaged the establishment of complete equality for all persons regardless of race. Equality is denied to Negroes, he contended, as long as their children cannot attend white schools.

He also asserted that he had been unable to find anything—in the debates in Congress out of which had emerged the Fourteenth Amendment and the civil rights legislation of the Reconstruction Era after the Civil War—that would show that Congress had not intended the amendment to affect school segregation.

The amendment was meant, he added, to prevent the states from maintaining "caste systems predicated on race."

When Associate Justice Stanley F. Reed asked Mr. Robinson if legislation would add anything to his position, he replied:

"Oh yes. If we had a Congressional act we probably would not have to be here now."

Mr. Robinson added, however, that a law by Congress could in no way detract from the power of the Judiciary to decide the constitutional issues involved.

Court Told It Has 'Duty'

Mr. Marshall following Mr. Robinson, said that the answer was a "flat yes" to the high court's question of whether it had power to outlaw segregation by judicial decree. The amendment also "imposes a duty" on the court, he argued, to rule that Negro and white children must be educated in integrated public schools.

The same type of statute is involved in the pending cases, Mr. Marshall said, as was involved in the "Black Codes" that some Southern states enacted after the Civil War to restrict Negroes. The Fourteenth Amendment, he contended, was adopted to deprive the states of authority to enforce such codes.

"It was also intended," he declared, "that states in the future would not have the power to set up Black Codes."

For this reason, he said, the court should now strike down state laws that bar Negroes from white schools.

"The question," Mr. Marshall argued, "is whether the public policies, the prejudices, the mores of South Carolina and Virginia, or the provisions of the Constitution, shall prevail."

He also assailed the "separate but equal" doctrine. This doctrine was enunciated by the Supreme Court nearly sixty years ago in the case of Plessy vs. Ferguson and it held that segregation was not unconstitutional if facilities equal to those provided for white persons were provided for Negroes. Transportation, rather than education, was involved in that case.

Associate Justice Felix Frankfurter asked Mr. Marshall whether, if more money were spent and better schools provided for Negroes than for white pupils, he still would contend that segregation was unconstitutional.

Mr. Marshall replied emphatically that he would.

'Equal Education' Seen

The white-haired Mr. Davis, the Democratic candidate for President in 1924 and a familiar figure before the high court's bar, began his argument by stating that South Carolina had equalized school facilities for the races.

U. S. Again Asks Ban On Segregation

Position Restated To Supreme Court

BY CHARLOTTE G. MOULTON
United Press Staff Writer

WASHINGTON, Dec. 8 — The Eisenhower administration said today it agrees fully with the Truman administration that public school segregation is unconstitutional.

Assistant Atty. Gen. J. Lee Rankin told a Supreme Court hearing on the politically explosive issue that "segregation in public schools cannot be maintained under the 14th amendment" to the Constitution.

Rankin made his flat statement after some justices expressed curiosity over the "friend of the court" brief filed recently by Atty. Gen. Herbert Brownell Jr.

Justice William O. Douglas said the brief went "no further than saying we can decide this case either way."

"No," Rankin replied," . . . The court can find only one answer . . . when they stand before this court and say that the only reason for segregation is color, the court must say that the 14th amendment does not permit this to happen."

Justice Robert H. Jackson asked Rankin if he stated the department's position.

Gives Official Position

Rankin replied that he did and that the new administration agrees fully with the position set forth in the brief filed by James P. McGranery, former President Truman's attorney general.

Brownell's supplementary brief filed with the court touched only on specific questions asked by the tribunal.

Rankin told the court, now hearing rearguments on the issue, that states should be granted a year to present to lower courts a plan for handling integration of white and Negro schools.

But Justice Jackson said the government has failed to suggest any criteria for lower courts to apply when integration plans are presented. He reminded Rankin that "local customs would still perpetuate segregation in school districts where they really want it."

Southerners Urge Restraint

Two Southern attorneys urge the tribunal to show "judicial restraint" and leave the question of public school segregation to state legislatures.

Atty Gen. T. Lindsay Almond of Virginia and T. Justin Moore, representing the Prince Edward County, Va., school board, said the issue is not one which properly can be settled in court.

Moore said the issue should be left to legislatures which "are as much a guardian of the people as are federal courts."

Almond said the Negroes are "asking this court to amend the constitution and to go further than Congress ever intended."

Attorney Thurgood Marshall of New York, representing the Negro parents, reiterated that the high court "must" outlaw racial segregation.

He asserted a selective service pamphlet said racial discrimination—"educational and otherwise in the South"—almost caused the country to lose one war.

"I gather from the recommendation that unless changes are made, we'll lose another one," Marshall said.

Brownell Backs Segregation Ban

By NICHOLAS P. GREGORY
Inquirer Washington Bureau

WASHINGTON, Nov. 27.—Attorney General Herbert Brownell, Jr., today told the Supreme Court it had authority to end segregation in public schools, including those in the District of Columbia.

In an 188-page brief, the Attorney General answered five questions which the court had asked the Justice Department on June 8, when it began consideration of five separate cases calling for an end to segregation.

The suits were filed by interested parties representing the District of Columbia, Virginia, South Carolina, Kansas and Delaware.

BROWNELL'S CONCLUSION

Brownell's brief concluded, after exhaustive study of related questions on segregation:

"1. That the primary and persuasive purpose of the 14th Amendment, as is shown by its history and as has repeatedly been declared by this court, was to secure for Negroes full and complete equality before the law and to abolish all legal distinctions based on race or color.

"2. That the legislative history of the amendment in Congress is not conclusive.

"3. That the available materials relating to the ratification proceedings in the various State legislatures are too scanty and incomplete, and the specific references to school segregation too few and scattered, to justify any definite conclusion as to the existence of a general understanding in such legislatures as to the effect which the amendment would have on school segregation.

"4. That it is within the judicial power to direct such relief as will be effective and just in eliminating segregated school systems.

"5. That if the court holds that laws providing for separate schools for white and colored are unconstitutional, it should remand the instant cases to the lower courts with directions to carry out the court's decision as expeditiously as the circumstances permit.

If the court rules that it has power to end segregation in public schools, Brownell said, it should require that all its agencies to hire and fire

HIRING AND FIRING

More recently, segregation in the armed forces came to an end. Earlier this week the District of Columbia commissioners ordered

without regard to race, creed or color. However, the commissioners did not rule on ending segregation in the district's schools, apparently awaiting action by Brownell and the courts. Segregation in the schools here has been in practice since 1866.

Brownell's brief covered the cases filed by various Negro organizations in Virginia, Delaware, Kansas and South Carolina, asking for an end to segregation. In each case Negroes were denied admission to white schools.

LEGISLATION CITED

District commissioners have defended their segregation policy on the basis of legislation passed by the 39th Congress whch provided money to finance separate schools for Negroes and whites.

Brownell conceded that the 39th Congress did approve such legislation, but disputed whether the post-Civil War legislators intended this as a permanent policy.

Brownell supplemented his brief with one filed by the Justice Department under the Truman Administration. This stated flatly that segregation is unconstitutional.

It will be some time before the Supreme Court rules. It is not likely that any decision will be made until early next year.

First comment on Brownell's action was critical. Rep. E. C. Gathings (D,, Ark.) condemned Brownell for allegedly attempting to usurp the power of Congress.

'TREMENDOUS BLOW'

LOVEJOY, Ga., Nov. 27 (INS).—Gov. Herman Talmadge said today that the administration's request that public school segregation be ended by the Supreme Court "will be a tremendous blow to the Republican Party in the South."

At Baton Rouge, Gov. Robert F. Kennon of Louisiana said: "I believe the U. S. Supreme Court has shown over the years that it believes the control of schools is essentially a State function. Based on 75 years of Supreme Court decisions, it should and will find that the State control of education is the issue to be decided and not segregaton."

SUPREME COURT WINDS UP PLEAS ON SEGREGATION

Delaware Insists Dual Schools Are Legal

Washington, Dec. 9 (AP)—Delaware—like Virginia, South Carolina, and Kansas earlier — told the Supreme court today the 14th amendment never was intended to outlaw separate public schools for white and Negro pupils.

The Delaware case is the last of five to come up for argument before the court which must decide the momentous issue of whether dual school systems violate the Constitution.

The arguments were completed at 2:42 p. m. but it may be months before the court hands down its decision. The court has heard three days of argument.

Before the Delaware case came up, counsel for the District of Columbia board of education said only an act of Congress could bring about an integrated school system in the nation's capital.

Calls It State Matter

H. Albert Young, Delaware's attorney general, contended that segregation is a matter of policy for the states—not the courts—to decide.

"The problem obviously is a legislative one and not a judicial one," Young told the court.

He argued that it was clearly understood by the Congress which proposed the 14th amendment after the Civil war, and the states which ratified it, that it would have no effect upon public schools.

The 14th amendment, ratified in 1868, says no state may deny any person due process and equal protection of the laws, nor abridge anyone's privileges or immunities because of race.

Young said Delaware's constitutional provision for a separation of the races in the public schools was "not based upon any declaration of natural or God made inequality or inferiority of the Negro."

Cites Congress Action

"It was adopted in the light of the history and tradition of the people of the state of Delaware, as the wisest method of educating the youth in the state," he told the court.

He stressed that Congress, about the same time it submitted the 14th amendment to the states for ratification, created and maintained segregated schools in the District of Columbia.

He said Congress did this despite efforts to eliminate segregation in the district.

17 States Have Segregation

"A Congress which believed that the 14th amendment invalidated public school segregation in the states would not have sustained it in the District of Columbia," he said.

Milton D. Korman, assistant corporation counsel for the District of Columbia, told the court that acts of Congress dating back as far as 1862 make separate schools for white and Negro pupils mandatory. Korman said that in the absence of an act of Congress, the board of education could not de-segregate the schools here regardless of the personal views of the members.

The Supreme court heard arguments last year for and against public school segregation. But instead of deciding then, it called for more discussion of specific legal points and of how the courts could and should oversee the carrying out of an anti-segregation decree, if one were handed down.

Seventeen states and the District of Columbia require some form of racial segregation in public schools. Three other states permit it. Some southern officials have talked of going over to private school systems if ordered to de-segregate public schools.

Associated Press

Thurgood Marshall, who attacked the constitutionality of public school racial segregation before the Supreme Court; he is counsel for the National Association for the Advancement of Colored People . . . born forty-five years ago in Baltimore; family legend says his great-great-grandfather was captured in a tough part of the Congo and brought to Maryland as a slave . . . his mother taught in the Baltimore public schools for a quarter of a century; his father, now dead, was a steward in an exclusive country club. . . Marshal worked his way through school as a baker and dining car waiter, and got his law degree at Howard University in Washington, D. C. . . . built up a busy law practice in Baltimore, but not a lucrative one, because he took so many civil rights cases . . . while still in his twenties, brought a successful suit forcing the University of Maryland Law School to admit Negroes . . . has been chief counsel for the N.A.A.C.P. since 1938, working primarily on civil rights . . . has won ten of the twelve cases he has argued in the Supreme Court . . . he is tall, burly, light-skinned; fun-loving in his relatively few hours of relaxation, he enjoys poker and phonograph recordings . . . he and his wife have no children, but relatives bought him an electric train, anyway.

Lawsuits Seen On Segregation

WASHINGTON—(AP)—Lawyers have ended their arguments and the Supreme Court is pondering, but the furor over the issue of separate public schools for Negroes and Whites seems likely to go on and on.

At least one Supreme Court justice apparently thinks that if the court outlaws racial segregation in the schools, the decision won't by any means close out the issue automatically.

"I foresee," said Justice Robert H. Jackson, "a generation of litigation."

Jackson did that bit of crystal ball gazing in the midst of three days of reargument last week on whether segregation violates the Constitution. He referred to the possibility of a whole series of new lawsuits if some counties or school districts balk at mixed schools or officials resign rather than accept them.

The entire Supreme Court obviously is concerned about the mechanics if not the factual social impact involved in putting a decision against segregation into effect.

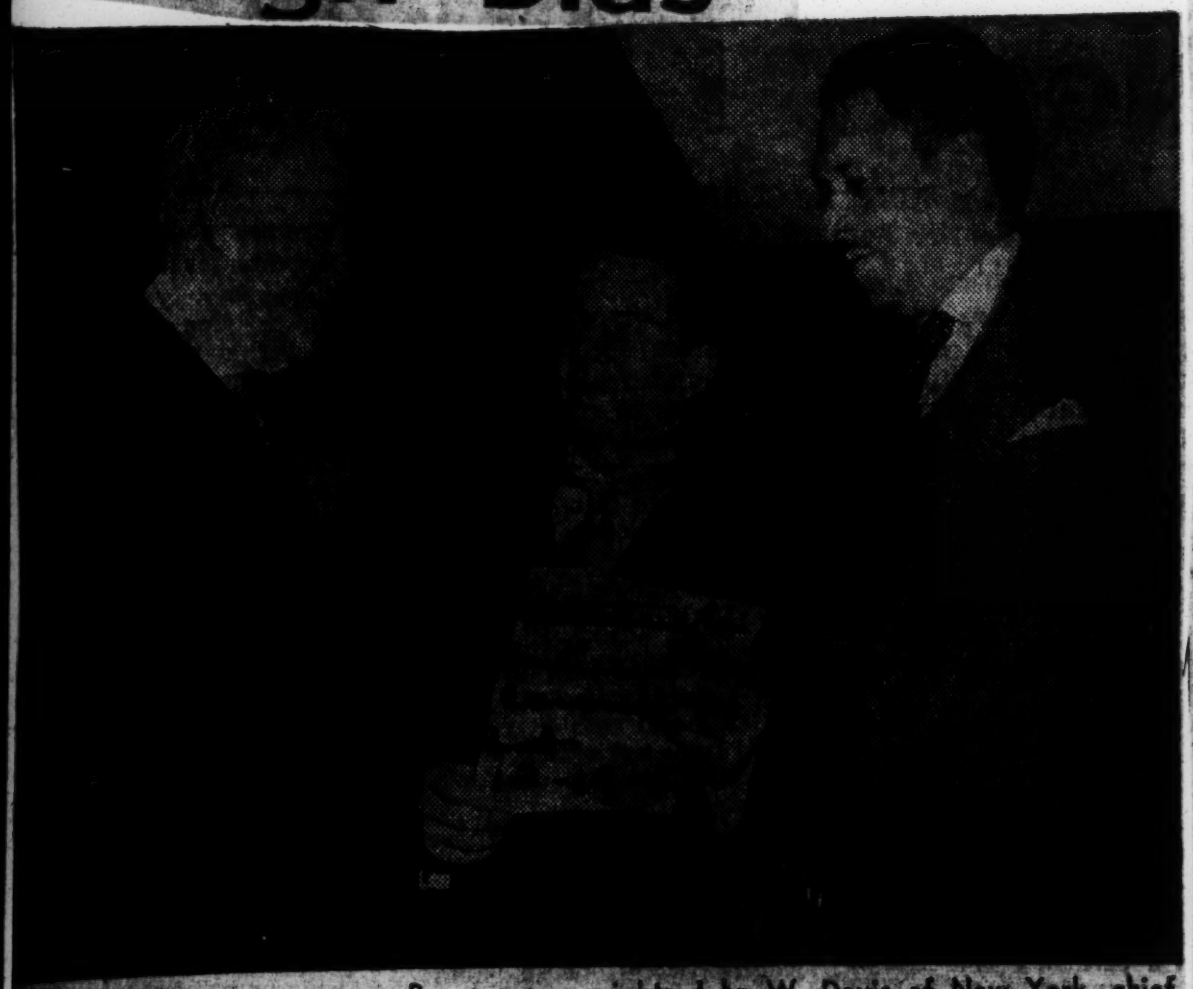
So are the 17 Southern and border states which would be most affected. All of them, through their state constitutions or laws or both, have compulsory racial separation in their school systems. Something like two-thirds of the nation's Negroes and more than 12,000,000 school children of both races live in these states.

Deep in Dixie, some states are showing little inclination to let Negro and White children sit side by side in classrooms regardless of what the Supreme Court does in a decision that may be months away.

South Carolina, Georgia and Mississippi already have taken preliminary steps to do away with their public schools so as to by-pass a possible ruling against segregation.

EDUCATION
PUBLIC SCHOOLS

South Shaky As Justices Weigh Bias



Legal Opponents—Representing the best in U. S. legal minds, three of the attorneys who participated in arguments before the U. S. Supreme Court on public school segregation posed for this photo during a recess of the hearing. Left to right: John W. Davis of New York, chief representative of the states upholding segregation; J. Lee Rankin, Assistant U. S. Attorney for the Federal Government, and Thurgood Marshall of New York, chief counsel for the NAACP.—IN Photo.

By WILLIAM G. NUNN (Managing Editor) and AUSTIN NORRIS (Editor, Phila. Courier)

WASHINGTON—When the furore subsided here last week in the U. S. Supreme Court after three days of legalistic arguments, oratory, implied threats and predictions of dire consequences . . . John Q. Public began to speculate about many of the issues raised.

It wanted to know what the decisions were likely to be in the famed school segregation cases!

It wanted to know what would be the effect . . . if these decisions were favorable, or unfavorable to Negro Americans.

Most people are aware that there are FOUR vitally interested groups to these litigations, although only Negroes and the South appear in the captions of these cases. However, carrying equal effect, will be the effect of these decisions on the nation as a whole . . . and on the entire civilized world!

Although the South may appear to have a paramount interest in these cases, because long-established customs, laws, mores and the way of life in seventeen states have been placed in jeopardy, the consequences to the other groups may be just as far-reaching.

NEXT WEEK!
The Courier Reviews Plessy vs. Ferguson

It is the paradoxical truth that the South stands to gain by a decision against it.

* * *

IT IS GENERALLY admitted that the South is fifty years behind the North in its development. This is largely because the Negro population, which forms about one-third of the population in the Southern states, is a drag on the social and economic life of the community . . . because of racial legislation and restrictive race practices.

Booker, T. Washington once said: "You cannot keep a man in the gutter without staying there yourself." This has been true of the South. Segregation has been the damnation of the entire South . . . whites and Negroes alike. Remove this plague and the South . . . with its advantages of climate and natural resources . . . must become a boom section.

Despite the South's threats of revolt in the event segregation is outlawed, the widespread opinion is that the Southern states will conform to the Court's order. There will, of course, be some effort to circumvent these orders, within the law.

Once these efforts have failed (and they will fail), the better elements in the South will force the South to surrender to progress.

* * *

THIS POSITION is supported by what happened in Supreme Court decisions on white primaries and graduate and professional school cases . . . all of which were decided against the South.

Most scholars recognize that next to slavery, segregation is the cruelest blow struck against Negroes in this nation. It is like condemning a person without a trial, or depriving a person of a chance to be heard in his own defense.

It implants in the minds of whites, a condition that Negroes are inferior and then denies them the opportunity to combat this erroneous assumption by the proof which contact would give.

In the South, the masses of whites never get a chance to know the finalities and virtues of Negroes, because they do not come in intimate contact with enough of them. They only see Negroes casually . . . and then behind the barbed wire of segregation.

* * *

WITHOUT THE benefit of contact, it is easy for people to believe the lies and distortions which evil and prejudiced minds have conjured up . . . and repeated for centuries.

It is segregation . . . more than any other device . . . which has reduced Negroes to the status of second-class citizens.

Segregation in our schools is the most vicious and most harmful form of segregation. The white youth's belief in racial superiority, imbedded in his mind by separate school systems, generally poisons all of his relationships with Negroes during his entire life. This is the basis for his refusal to work with Negroes as equals . . . or to associate with them in public places.

American Negroes have most to gain . . . and most to lose . . . in this legal struggle for equality. If the decision of the Supreme Court abolishes racial segregation in the public schools, it will be but a short time before all forms of segregation will disappear.

A favorable decision will mean that for the first time, segregation per se, will have been adjudged by our courts to be discriminatory and a violation of the Fourteenth Amendment. If segregation in the public schools is discriminatory . . . then all other forms of segregation must also be discriminatory.

* * *

IF THE DECISION in these cases upholds segregation, it is believed that segregation will continue as a fixture in Southern and border states for another fifty years.

Negro leaders, who have sought for years to have the Supreme Court decide a case which would reverse the doctrine in the Plessy v. Ferguson case of "separate but equal," have been mindful that if it was raised before the time was ripe and before a Court that was not liberal, Negro advancement toward equality would be definitely stopped for years to come.

It is felt that there is little or no chance of getting favorable race legislation through Congress.

None has been enacted by that body since 1875.

* * *

THE ONLY CHANCE, therefore, for racial advancement, is through a fair interpretation of existing laws.

It has always been the belief that there has been sufficient protection in present laws to guarantee equality of opportunity and treatment to Negroes.

The past and present plight of Negroes has not been due to lack of laws, but to a prejudicial interpretation of these laws by the Highest Court. Plessy v. Ferguson, decided in 1896 by the United States Supreme Court has, in effect, nullified the protection given by the Fourteenth Amendment.

Negroes are seeking to right this wrong, before the very tribunal which committed it more than a half-century ago.

* * *

NEGRO LEADERS and liberals believe that it is easier to overthrow a decision made almost sixty years ago, than it would be to overthrow in the near future an adverse decision made in these cases.

The plea of changing times and changing outlook could not be urged to knock down a recent adverse decision.

Negroes must, therefore, win their cases against segregation now, or they cannot expect to win in the foreseeable future.

The Supreme Court recognized the nation's interest in these cases by asking the Attorney General of the United States to file a brief as "a friend of the Court."

The Eisenhower Administration was forthright in advising the Court that it not only had the power to wipe out segregation, but that it was its duty.

* * *

DEMOCRATIC Atty. General James P. McGranery had given similar advice when this case was first argued a year ago.

A survey of citizens outside of Southern and border states showed that more than 60 per cent favored wiping out segregation in the public schools everywhere in the nation.

Churches of all denominations have been more active in the fight against racial discrimination in the last two years, than ever before.

Colleges and universities throughout the natioon are leaders of a new liberalism, which seeks the abolition of racial handicaps.

* * *

MOST INTELLIGENT people are aware that racial prejudice is not only immoral, but is unwise and inexpedient, in a world where more than three-fourths of the inhabitants are non-whites.

They know that racial prejudices, probably more than any other cause, can underwrite the dominant leadership of this nation in world affairs, and bring on a third world war.

This nation's good intentions towards the darker people . . . and its prestige and leadership . . . are in the hands of the Supreme Court. The world is anxiously awaiting the decisions.

What is the Supreme Court likely to do? It is widely admitted, except by partisans of the South, that the Court has the power and the duty to wipe out segregation in our public schools. The only question is whether policy or prejudices on the part of the justices will swerve their judgment.

* * *

SOME LAWYERS detected a bias in the questioning of some of the justices, who intimated that the wiping out of segregation was the function of the Congress and not of the courts.

This line of questioning was construed as an intention to evade the issue and to maintain a status quo.

Everyone knows that the South can block any new racial legislation in Congress. Two of the most learned justices followed this line of questioning.

It is unreasonable to assume that the Court will go against the expressed wishes of two administrations — one Republican and the other, Democratic. For if the South could not intimidate and bluff an administration which must face elections, its bullying tactics should have no affect on the Supreme Court, whose members are elected for life.

* * *

IT IS MOST unlikely that the Court would cater to the South against the majority opinion in this nation.

It is also unreasonable to assume that these justices, regardless of their personal feelings, are not aware of the world-wide effect of their decisions . . . and that they would stultify this nation's honor to appease the most backward element of our population.

It seems incredible that nine of the most learned men of the nation would support the prejudices of a small segment of the population against the well-being of the nation and the world.

For in political science, as well as mathematics, the whole is greater than any of its parts.

Injunction barring jim crow stands

Afro-American
Mo. officials had
P. 1
restricted pool
to whites only

(By NNPA) 12d

WASHINGTON — The U. S. Supreme Court Monday declared that white people cannot bar colored people from using the city-owned swimming pools in Kansas City, Mo.

P. 1

The court's declaration was manifest in its refusal to review a lower court decision which has forbidden Kansas City officials to refuse colored people the use of the Swope park pool.

The court's refusal to review the case gave hope this week to the colored citizens of Baltimore who have instituted a suit in federal court to open all city outdoor swimming pools to colored as well as white.

The Baltimore suit, filed by NAACP lawyers last month, has charged that the one outdoor pool maintained by the city for colored and the six for whites is discrimination.

The city has maintained that swimming facilities in Baltimore are equal.

The action of the high court represents a final victory for Miss Esther Williams, Miss Lena R. Smith and Joseph N. Moore, who brought suit in the Federal District Court at Kansas City to enjoin the city from refusing to admit them to the wading, swimming and diving facilities in Swope park, solely because of their race or color.

The suit was prosecuted on appeal by the NAACP.

Ruled Not Equal

The District Court found that the Parade park swimming pool, constructed and maintained for the exclusive use of colored citizens, was not substantially equal in character, location, appointment, nor facilities, with major swimming pools maintained by the city for white citizens.

It held that the refusal of the city to permit colored persons to use the Swope park swimming pool deprived them of the equal protection of the law in violation of the Fourteenth Amendment of the Federal Constitution.

Colored Usage Limited

The city was enjoined from refusing to admit them to the Swope park pool. The Eighth United States Circuit Court of Appeals upheld the judgment of the District Court.

Taking a broader view of the case, the Court of Appeals concluded that colored persons, having been admitted to Swope park, were denied equal treatment in not being permitted to use all of its facilities.

White people could go to Swope park and indulge in all of its recreational activities. But colored people, desiring to swim, had to leave the park and go to Parade pool, on the other side of town.

In its brief in opposition to a review, the NAACP told the Supreme Court that no basis for review of the judgment of the circuit court exists and asked for dismissal of the petition for a review.

Main Recreation Center

Swope park is the main outdoor recreational center of Kansas City. It consits of some 1,800 sas City. It consists of come 1,800 swimming pool, two golf courses, a zoo, a theater, a band pavilion, picnic shelter and facilities.

All of these facilities, except the swimming pool, were open to colored and white people alike.

The swimming pool, restricted to white persons, was constructed at a cost of $534,544. It is divided into three separate parts —swimming pool, diving pool, and wading pool.

Parade Park Smallest

It can accommodate 3,000 persons at the same time, and there is no time limit on an individual's use of the pool during the hours it is open to the public.

A refreshment concession is operated in connection with the pool. There also are a sun beach, automatic driers, and a separate bath house. A fee of 40 cents for adults and 20 cents for children is charged.

The Parade park pool cost $60,000 and has no separate facilities for diving, swimming and wading, no automatic driers, no sun beach, no refreshment concession, and no admission fee. It can only accommodate 250 persons at a time and its size is such that a time limit has to be set on each person's use of the pool.

HIGH COURT RULES VIOLATORS OF RESTRICTIVE COVENANTS CANNOT BE SUED FOR DAMAGES

Oklahoma Tribunal Will Have to Reverse Opinion Making Signators Liable In Such Actions

OWNERSHIP AND OCCUPANCY SEGREGATION OUT FOR COUNT

By ALICE A. DUNNIGAN

WASHINGTON.—(ANP) — Signers of restrictive real estate covenants which forbid the sale of property to certain racial or religious groups may not be sued for damages for breaking these covenants, the United States Supreme court ruled here in its final session.

In making last week's ruling, the high court reaffirmed its 1948 decision which said racial covenants are legal, but cannot be enforced in the courts.

The high tribunal voted 6-to-1 to extend its 1948 action. In addition it declared that signers of such covenants cannot be sued for damages resulting from the sale of such property to persons of a different racial group.

The case originated in Los Angeles where a house in a restricted neighborhood was sold to Negroes. Neighbors sued the white seller of the home for damages amounting to $11,600.

The California court threw out the suit, but the Supreme court granted a review because of the important constitutional question involved. The high court was asked to decide whether restrictive covenants deprived non-Caucasions of equal protection of the laws as provided by the 14th Amendment.

The court decided five years ago that suits aimed to exict Negroes from restrictive areas are unenforceable, but it did not state whether damage suits could be brought against sellers who violated the "gentlemen's agreement" clause.

Various state courts have rendered different decisions on the question. Michigan and the District of Columbia have refused to ntertain damage suits, while Missouri and Oklahoma held that such amage suits could be enforced.

In writing the opinion, Justice Minton declared that compelling he seller of the property to respond in damages would be for he State to punish her for her ailure to perform her covenant to ontinue to discriminate against on-Caucasions in the use of her roperty."

He pointed out that such covenants could be enforced by "voluntary adherence" but the state cannot be asked to intervene because f public policy.

He further contended:

"If a state court awards damges for breach of the restrictive ovenant, a prospective seller of estricted land will either refuse o sell to non-Caucasians or else ill require non-Caucasians to pay higher price to meet the damges which the seller may incur. olely because of their race, non-aucasian will be unable to purase, own, or enjoy property on he same terms as Caucasians.

Vinson based his dissention on he idea that no non-Caucasian as being sued in this case, it as only the thought of covenant gners, he said, "that an influx non-Caucasian neighbors would npair their enjoyment of the roperties, and, whether right or rong each had the right to conol the use of his property against hat event and to exact a promise om his or her neighbor that he r she would act accordingly . . . By this suit the plaintiffs sought nly to have respondent disgorge hat which was gained at the expense of depreciation in her neighbor's property."

The Chief Justice accused the majority of the court with failing to put first things first. "It decides the merits and then confronted by its decision on the merits, resolves its doubts that it has power to decide the merits."

He claimed that the majority ruling might be proper in the federal courts, but interference with the state courts must rest on the 14th Amendment.

Since the high court must rest its decisions on the Constittuion alone, Vinson declared that "we must set aside predilections on social policy and adhere to the settled rules which restrict the exercise of our power of judicial review."

The restrictive covenant agreement was signed by a neighborhood group in Los Angeles in 1944, prohibiting the sale of property to any non-Caucasian. Six years later one of the property owners violated her agreement and sold the property to a Negro family. Three of the neighbors then brought the damage suit against the seller, on the grounds that the presence of Negroes living in the community decreased the value of their property.

Supreme Court Reaffirms '48 Covenant Decision

By Alice A. Dunnigan

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RESTRICTIVE COVENANT ISSUE FINALLY REACHES UNITED STATES SUPREME COURT WITH NEW ANGLE

Court Ponders Whether or Not Signer of Such Instrument Is Liable to Associates

LOS ANGELES CASE ATTRACTS WIDE ATTENTION

WASHINGTON — (ANP) — While Negroes are eagerly awaiting the U. S. A. Supreme court decision relative to the constitutionality of segregation in the nation's public schools, another case of equal importance will soon be heard by that august body. It involves residential restrictive covenants.

The case of Barrows vs Jackson is scheduled to be argued Tuesday, April 28, before the nation's highest tribunal. The issue to be decided whether or not damages can be assessed against the singer of a restrictive covenant who sold her property to a Negro.

The principals in the case are Mrs. Leola Jackson, a white Los Angeles home owner who sold her home to a Negro family in 1950, and Mrs. Olive Barrows and other property owners who had signed a race restrictive agreement with Mrs. Jackson in 1944.

The agreement provided that only persons "wholly of the white or caucasion blood" could occupy the property."

Mrs. Jackson sold her property for $8,500 and she is being sued for about $15,000.

The U. S. Supreme court already has held that restrictive covenants are unenforceable. This decision was rendered in 1948.

The Los Angeles case has had three decisions, all of which support the white property owners' right to sell to the Negro family. The first decision occurred when a Los Angeles judge threw the suit out of court in 1951 on the ground that the famed race restriction cases of 1948 were controlling and that he was without power to award damages.

Later, the California District court of appeals agreed with the judge in a decision filed last August. When the California Supreme court added its agreement to that of the other courts, Mrs. Barrows and her attorney asked for, and got, a review in the nation's highest tribunal.

Meanwhile, three other state Supreme courts, and the federal court in the District of Columbia, have had the damage question bebore them. Two of the states—Missouri and Oklahoma—held that damage actions are permissible while Michigan and the District of Columbia courts held to the contrary. The U. S. Supreme court's decision is expected to settle this issue permanently.

Chief contention of the white property owners is that in the 1948 cases the U. S. Supreme court held only that Negroes could not be ousted from homes they had bought. That decision, they say, does not hold that one property owners cannot hold his cosigners for damages.

In a brief filed through Loren Miller, Los Angeles attorney; Thurgood Marshall, N. A. A. C. P. special counsel, and Franklin Williams, West Coast regional director of the NAACP, Mrs. Jackson argues that the effect of an award of damages is to order enforcement. She said in part:

"No property owner will sell restricted property to Negroes if he has to pay damages that will take away all of the proceeds of the sale."

The case has been spearheaded by the West Coast region of the NAACP which regards it as one of the most important civil rights cases ever to arise in the area.

The case not only is of importance to West Coasters; it is of importance to Negroes throughout the nation. If white property owners are allowed to collect damages against another signer who sells to Negroes, then these white property owners will stop selling to colored persons.

The result will be that Negroes will be confined to definite geographic areas and the "black ghetto" will return. Most of the breaking down of ghettos in large cities has occurred since the U. S. Supreme court's decision in 1948 declaring restrictive covenants unenforceable.

Race Restrictive Covenant Appeal To Be Heard Tues. In U. S. Supreme Court

Washington, D. C.—The question as to whether a person has the right to go into court and to sue and recover money damages from another who failed to live up to a race restrictive covenant or contract will be argued before the United States Supreme Court Tuesday, April 28.

Attorney for the National Association for the Advancement of Colored People, Loren Miller of Los Angeles, who has successfully argued several other restrictive covenant cases, will argue that a court's awarding of damages for breach of restrictive covenant clauses or contracts deprives a person of his constitutional rights and is in complete violation of the 14th Amendment of the Constitution of the United States.

California Community

The case, entitled Barrow, et al vs. Jackson, involves Mrs. Leona Jackson, a white resident of a Southern California community, who in 1950 sold a house to persons she allegedly knew would let Negroes occupy it. In the deed Mrs. Jackson refused to include a racial restrictive clause, which would restrict the occupancy of the house to "Caucasians" only.

The parties who had signed the restrictive "contract" with Mrs. Jackson sued her for damages in the California Superior Court. The case was dismissed and on appeal both the California District Court of Appeal and the California Supreme Court upheld the earlier decisions.

To Recover Damages

In the brief filed with the United States Supreme Court, Mr. Miller has called upon the high court to settle this question as to whether one has the right to recover damage against a person who sells his property to a member of another racial group in violation of a covenant.

He pointed out that California, Michigan and Washington, D. C. have ruled that a person cannot do so, while Oklahoma and Missouri have upheld the right of their courts to entertain damage actions of this kind.

"The Fourteenth Amendment does not proscribe individual action," says Mr. Miller in quoting the California court, "but when, as here, the aid of a court is sought to compel one of the parties to the restrictive covenant to abide by its terms by subjecting him to an action for damages because of the use or occupancy of the property by non-Caucasians."

Judge Rules

Gives Okay To Jimcrow Housing In Savanah, Ga.

WASHINGTON, D. C. — (ANP) — Judge Alexander Holtzoff of the U. S. District court of the District of Columbia ruled last week that the separation of races in federal government or any public facility is not a violation of their constitutional rights.

It is entirely proper to require people of the white and colored races to use separate facilities under either federal or state regulations, providing equal facilities are furnished each, Judge Holtzoff stated.

This decision was based on the so-called "separate but equal" doctrine which the judge claims is still law under the Supreme court decision.

The opinion was issued in connection with a suit filed last September on behalf of Prince F. Heyward and 12 other Negro families who were among those being displaced from the "Old Fort" site in Savannah, Ga., to make way for the construction of the "Fred Wessels Homes," a public low rent housing project to be constructed and operated by the Savannah Housing Authority for white occupancy with funds provided by the Federal Public Housing administration.

The suit sought to enjoin the expenditure of federal funds for this purpose on the theory that the federal agency, because of the constitution and laws and public policy of the United States, as construed by the Supreme court could not give effect to or participate in racial limitations upon occupancy of public housing.

Attorneys for the government defendants filed a motion for summary judgment and to dismiss the suit on several technical procedural grounds and contended that the imposition of segregation was by the local housing authority and not by the federal agencies involved.

After conclusion of oral argument on the motion, during which Judge Holtzoff brushed aside the technical and procedural questions to reach the merits of the case, the court dictated his opinion without leaving the bench.

Thurgood Marshall, director-counsel of the NAACP Legal Defense and Educational Fund, Inc., upon learning of this decision, stated that an immediate appeal would be taken from Judge Holtzoff's decision to the United States Court of Appeals for the District of Columbia circuit.

The case was argued by Frank D. Reeves, Washington representative for NAACP, and Mrs. Constance Baker Motley.

Negroes May Be Barred From Public Housing, District Judge Rules

WASHINGTON, April 22 (AP) — U. S. District Judge Alexander Holtzoff has ruled that Negroes may legally be barred from federally-aided housing projects where equal facilities are available elsewhere.

In his ruling, which granted a motion by the Federal Housing Administration to dismiss an injunction suit against it, Judge Holtzoff cited the "separate but equal" doctrine as laid down by the Supreme Court.

The injunction suit was brought by the legal defense and education unit of the National Association for the Advancement of Colored People in behalf of 13 Negro families in Savannah, Ga.

The suit sought to enjoin the use of a $2,293,000 loan from the Public Housing Administration by Georgia authorities planning the project.

Racial Realty Pact Hit by Court Ruling

Special to THE NEW YORK TIMES.

WASHINGTON, June 15—In a decision that may have wide application throughout the country, the Supreme Court ruled today that a California home-owner could not be sued for damages for failure to live up to a restrictive racial covenant clause in a real estate contract.

The constitutional question involved was whether a suit for damages in a state court would constitute state action under the Fourteenth Amendment to enforce such a covenant. That amendment provides that no state shall make or enforce any law that abridges the privileges or immunities of citizens of the United States.

The Supreme Court held in 1948 that voluntary racial covenants were not illegal, but that they could not be enforced in the courts. Justice Sherman Minton, who delivered today's 6-to-one opinion, held that "the action of a state court at law to sanction the validity of the restrictive covenant here involved would constitute state action."

The case arose out of a restrictive covenant entered into by owners of residential real estate in a Los Angeles neighborhood. Miss Leola Jackson, one of the property owners, was sued for $11,600 for breach of the covenant.

The complaint alleged that she violated the covenant by conveying her real estate without incorporating in the deed the restriction contained in the covenant and by permitting non-Caucasians to move in and occupy the premises.

Three neighbors brought the suit on the ground that the value of their property dropped sharply after Negroes moved into Miss Jackson's former home.

The California courts dismissed the damage suit, relying on the Supreme Court's ruling in the 1948 case. The Federal tribunal affirmed that dismissal today.

Vinson Dissents Vigorously

Racial covenants are contained in real estate sales contracts in many parts of the country. The high court's ruling re-emphasized that their effectiveness lay solely in voluntary enforcement, and that no remedy at law existed against a breach.

Justices Hugo L. Black, Felix Frankfurter, William O. Douglas, Harold H. Burton and Tom C. Clark joined Justice Minton in the majority opinion. Justices Stanley F. Reed and Robert H. Jackson did not participate.

Chief Justice Fred M. Vinson, however, entered a vigorous dissent. He held that the majority ruling imposed broad Constitutional limitations on state courts that were unwarranted, and that the issues involved were not the same as those in the 1948 ruling.

Justice Minton asserted that to permit Miss Jackson to be sued for damages would be for the State to punish her for her failure to perform her covenant to continue to discriminate against non-Caucasians in the use of her porperty."

Will Not Permit Coercion

"The result of that sanction by the State would be to encourage the use of restrictive covenant," he said. "This court will not permit or require California to coerce respondent [Miss Jackson] to pay damages for failure to observe a restricted covenant that this court would deny California the right to enforce in equity, or that this court would deny California the right to incorporate in a statute, or that could not be enforced in a Federal jurisdiction because such a covenant would be contrary to public policy."

Answering the argument of the neighbors who brought the suit that failure to enforce the covenant impaired the obligations of their contracts in violation of the Federal Constitution, Justice Minton said that the Constitutional provision invoked "is directed against legislative action only."

Chief Justice Vinson said that the point decided in 1948 was whether a state could decree the ouster of Negroes from property they had purchased and in which they were living. The court held that it could not.

The Chief Justice said that today's case was different in that "the majority [of the Supreme Court] identified no non-Caucasian who has been injured or could be injured if damages are assessed against respondent [Miss Jackson] for breaking a contract which she made willingly and voluntarily to petitioners, a promise which neither the Federal law nor the Constitution proscribes."

"I think that the absence of any direct injury to an identifiable non-Caucasian is decisive," he asserted.

the other restrictive covenant cases. We are now certain that we can satisfactorily meet any other efforts to circumvent these decisions. On the other hand, we are equally certain that the die-hard white-supremists will come forth with some other ingenious scheme, which we will have to meet.

"We will meet them as we have met the others and will not stop until Negroes are entirely free to live wherever they have the money to buy or rent."

Denies Damaae Claims When Pact Is Broken

WASHINGTON —(NNPA)— The United States Supreme court ruled Monday that state courts may not award damages for breach of a racial restrictive covenant.

By a 6-to-1 decision, the court closed the gap to use of the covenant to bar use or occupancy of property by colored persons or other prescribed race or religious groups.

It had previously ruled May 3, 1948, that racial restrictive covenants could not be judicially enforced.

Chief Justice Fred M. Vinson, who wrote the court's opinion in the four racial restrictive covenant cases which the court decided in 1948, wrote a vigorous dissent.

DELIVERS OPINION

Justice Sherman Minton delivered the opinion of the court last Monday. Justices Stanley F. Reed and Robert H. Jackson took no part in the consideration or decision of the case.

The majority opinion held that it would constitute state action for a state court to entertain a suit for damages for breach of a racial restrictive covenent case "as surely as it was state action" to enforce such agreements by injunction.

Allowing damages would deprive non-Caucasians of the equal protection of the laws in violation of the Fourteenth Amendment, the court held. But it was pointed out that no non-Caucasian was claiming in this cast that he had been denied his constitutional rights.

Justice Minton said the court was faced with a unique situation in this case, in which state action might result in a denial of constitutional rights and in which it would be difficult, if not impossible, for persons whose rights are asserted to present their grievances before any court.

The court relaxed the rule that a person cannot challenge the constitutionality of a statute unless he shows that he himself is injured by its operation.

"Under the peculiar circumstances of this case," Justice Minton declared, "we believe the rea-

Mrs. Jackson sold her home Feb. 21, 1944, by Leola Jackson, Olive B. Barrows, M. M. O'Gara, and an Richard Pikaar.

The agreement provided that none of the property covered by the covenant should ever be used or occupied by any person not wholly of the Caucasian race. This

The case grew out of a racial restrictive covenent executed in all deeds to the property.

Justice Minton said that the court did not include the "Because I cannot see how respondent can avail herself of the sons which underlie our rule denying standing to raise another's rights, which is only a rule of practice, are outweighed by the need to protect the fundamental rights which would be denied by permitting the damages action to be maintained."

In his dissenting opinion, Chief Justice Vinson said: "Because I cannot see how respondent can avail herself of the racial restrictive covenant in her suit for damages in and since I cannot see how the court can find that those rights would be impaired in this particular case by requiring re-

injury which she recognized that she has brought upon them," said Chief Justice Vinson, "I am unwilling to join the court in today's decision."

Deny Prayer On Steps To High Court

WASHINGTON —(NNPA)— The Rev. Smallwood E. Williams, pastor of the Bible Way church, was unable to obtain permission to hold prayer service on the steps of the United States Supreme Court building on Sunday, Feb. 8, for the conservation.

The Supreme Court marshal informed Rev. Williams that a congressional act approved August 18, 1949, does not permit such assemblages in the Supreme Court building or grounds.

The act in question makes it unlawful to parade, stand or move in procession or assemblage in the Supreme Court building or grounds. The act was aimed at picketing of the court.

The purpose of the prayer service on the Sunday prior to Lincoln's birthday. Rev. Williams explained, was to ask for divine guidance for the court in arriving at decisions of pending cases.

While the Rev. Mr. Williams made no reference to the five school segregation cases which are awaiting decision, it was obvious that he had these in mind in seeking permission for the prayer service.

Reverend Williams has celebrated his twenty-fifth anniversary as a pastor and radio preacher in Washington. His congregation gave him and his wife a two-month trip to Europe, the Holy Land, and the Near East, including Egypt where he met the American Ambassador and General Neguib, Egyptian Prime Minister and had a two-hour conference with the Grand Mufti Hassanein.

Supreme Court Turns Down Appeals Of 4 Men Sentenced To Die In Chair

Owner And Poll Tax Lists In N. Carolina Cases Upholds, 6-3, Selection Of Juries From Propert

WASHINGTON

Four colored men must die in the gas chamber at the North Carolina State Prison at Raleigh as a result of the action of the U.S. Supreme Court last Monday in affirming three judgments of lower federal courts.

The high court upheld North Carolina's use of property and poll-tax list—on which few colored persons' names appear—for selection of juries.

By a 6 to 3 decision, which produced nearly 40,000 words of conflicting views among the justices, the court rejected the appeals of the four men sentenced to death in three cases.

Killed Taxi Driver

The cases decided were those of Clyde Brown, convicted of criminally attacking a white high school girl in Winston-Salem, N.C.; Raleigh Speller, who was sentenced to death for attacking a white woman in Bertie County, N.C., and Bennie Daniels and Lloyd R. Daniel, who confessed they killed a white taxi driver near Greenville, N.C.

The condemned men in each case sought to set aside the state court convictions with habeas corpus actions in lower federal court. They contended that colored persons had been improperly excluded from either the grand or the trial juries they had met.

Associate Justice Stanley F. Reed, who wrote the court's majority opinion, noted the manner in which North Carolina draws its jury panels and said:

Not Unconstitutional

"We do not think a use, nondiscriminatory as to race, of the lists, violates the Federal Constitution's 14th Amendment, nor can we conclude on the evidence adduced that the results of the use requires a conclusion of unconstitutionality.

"Our duty to protect the Federal constitutional rights of all does not mean that we must or should impose on states our conception of the proper source of jury lists, so long as the source reasonably reflects a cross section of the population suitable in character and intelligence for that civic duty."

Associate Justice Felix Frankfurter wrote a dissenting opinion in which Associate Justice Hugo L. Black and William O. Douglas concurred.

Justice Frankfurter also issued a separate 16,000 word statement commenting on various aspects of the three cases.

In addition, Justice Black wrote a separate dissenting opinion of 2,100 words in which Justice Douglas joined.

Associate Justice Robert H. Jackson wrote a 6,000-word opinion concurring with the majority, and Associate Justice Harold N. Burton joined by Associate Justice Tom C. Clark also turned out a brief concurring opinion.

High Court Meets Today; Segregation Ruling Due

School and Texas Vote Cases Expected To Be Decided Soon

By LUTHER A. HUSTON

New York Times News Service, Special to The Atlanta Constitution

WASHINGTON, April 5—The Supreme Court will reconvene tomorrow after a recess since March 16 with 3[illegible] argued cases awaiting decision. Most important among them from the standpoint of issues involved and public interest are five cases involving racial segregation in the public schools.

No advance announcement is ever made on when decisions will be rendered and it is not expected that the rulings in the segregation cases will be handed down tomorrow. It is possible, however, that they might be read from the bench soon after the justices take their seats at noon.

BIAS BATTLE

The segregation cases come from Kansas, South Carolina, Virginia, Delaware and the District of Columbia and the basic issue is whether segregation of Negro from white children in separate schools maintained by public funds violates the Constitution. The doctrine that constitutional rights are not abridged if "separate but equal" school facilities are provided is under attack.

Another case awaiting decision is an attack by Negro voters upon what is known as the "jaybird" primary in Ft. Bend County, Texas. An organization known as the Jaybird Democratic Association holds an advance primary election which votes on candidates for county and precinct offices. In the general elections the name of the party does not appear on the ballot but the brief of the appellants points out that since 1889 the nominees approved in the "jaybird" primaries have almost invariably appeared as the nominees of the regular Democratic party.

Negroes are not permitted to participate in the "jaybird" balloting and they contend that their constitutional rights are violated since they are not allowed to vote in the primary that actually selects the candidate.

Issues Before Court

Mr. Warren ascends the Supreme bench at a time of wide-ranging controversy over many issues of civil rights—issues of individual liberties in relation to national security, and issues of the rights of minorities. On issues of individual liberties, the court has recently tended to restrict those liberties in the interest of security. Mr. Warren has warned of the dangers of Communist infiltration but has also cautioned that over-zealousness against communism might lead to the impairment of U. S. liberties. In California he successfully opposed a special loyalty oath for teachers in state universities. He has criticized Senator McCarthy for "blanket accusations" of Communist activity.

On the questions of the rights of minorities, the court has recently delivered several decisions — some written by Chief Justice Vinson—reenforcing those rights. It has ruled against segregation in interstate commerce and in the graduate schools of state universities. However, it has on its docket several cases involving the toughest decision on civil rights—segregation in public grade schools. Several Southern states have threatened to abolish the public schools rather than abolish segregation. Governor Warren has taken an advanced position on civil rights. He has favored a Federal F. E. P. C., and tried unsuccessfully to get a state F. E. P. C. He has said that the prime object of Government is "to insure equal opportunity in life for Americans of every racial origin and creed."

Associated Press Wirephoto

THE NEW CHIEF JUSTICE: Earl Warren, sworn in yesterday as the fourteenth Chief Justice of the United States, is helped into his robe in the Supreme Court by P. H. Marshall, who has been the court's robing attendant for twenty-nine years.

High Court Rules Jaybird Primary in Texas Illegal

By LUTHER A. HUSTON

New York Times News Service, Special to The Atlanta Constitution

WASHINGTON, May 4—The Supreme Court held today that the Jaybird primary, which has been held regularly in Fort Bend County, Texas, since 1889, was a device to bar Negroes from voting and dodge the guarantee of the 15th amendment that the right of citizens to vote shall not be denied or abridged because of race.

By a vote of 8-to-1, it reversed a verdict of the Fifth Circuit Court of Appeals that because the primaries held by the Jaybird Democratic Association, known as the Jaybird Party, were not controlled by the state the procedure followed was not unconstitutional.

The effect of the ruling is to outlaw a procedure by which Democratic candidates for office have been selected in Fort Bend County for more than 50 years.

JURISDICTION

The Jaybirds contended that the controversy was not within the jurisdiction of the federal courts because Negroes were not denied the right to vote in the regular state-controlled primaries. The plaint of the Negroes was that since the Jaybird primary picked the candidates, they actually were barred from participation in the only county election that counted.

Justice Hugo L. Black announced the judgment of the court in an opinion in which Justices William O. Douglas and Harold H. Burton joined. Justice Tom C. Clark, who is from Texas, Chief Justice Fred M. Vinson, and Justices Stanley F. Reed and Robert H. Jackson joined in a separate concurrence written by Justice Clark. Justice Felix Frankfurter wrote a separate concurring opinion.

The dissenter was Justice Sherman Minton, who said he was not concerned "as to what happens to the Jaybirds or their unworthy scheme," but held that the Supreme Court "has power to redress wrong under the (15th) amendment only if the wrong is done by the state." He shared the Appeals Court view that no state action was involved in this proceeding.

JAYBIRD HISTORY

Justice Black recounted the history of the Jaybirds in his opinion, pointing out that all white residents of Fort Bend were members if their names were on the official voting list and they had paid their poll tax.

The Jaybirds held their primaries in May or June, whereas the regular state primaries were held in July. It was acknowledged that invariably the names of Democratic candidates appearing on the ballot in the state primaries were the same as those who ran in the Jaybird primary. A previous Supreme Court decision had upheld the right of Negroes to vote in Texas state primaries.

Supreme Court Bars Special Party Ballot

High Tribunal Outlaws Texas County Primary As Block To Negro

By KARL R. BAUMAN

WASHINGTON, May 4 (AP)—The Supreme Court today outlawed "Jaybird primaries," open only to whites, in Fort Bend County, Texas.

The decision broadened a 1944 ruling that Negroes may not be excluded from any election which is a part of a state's election machinery.

The high court ruled the exclusion of Negroes from unofficial primaries conducted by the Jaybird Democratic Association in Ford Bend County violates the constitutional guarantee that no person may be denied a vote on account of race.

The association has been conducting all-white primaries since 1899. The custom is to put the nominees of the "Jaybird primaries" on the ballot in the regular Democratic primaries.

Black's Opinion

Justice Black, who wrote the court's main opinion, said it was "immaterial that the state does not control that part of this election process which it leaves to the Jaybirds to manage."

"The Jaybird primary has become an integral part, indeed the only effective part, of the elective process that determines who shall rule and govern the county," Black said.

"The effect of the whole procedure, Jaybird primary plus Democratic primary plus general election, is to do precisely what the 15th Amendment forbids—strip Negroes of every vestige of influence in selecting the officials who control the local county matters that intimately touch the daily lives of its citizens."

Justice Clark, a Texan, said in a concurring opinion it was quite evident the Jaybird Democratic Association "operates as an auxiliary of the local Democratic party organization, selecting its nominees and using its machinery for carrying out an admitted design of destroying the weight and effect of Negro ballots in Fort Bend County."

Minton Dissents

Only Justice Minton, of the nine, dissented. He called it an "unworthy scheme," but took the position that the "Jaybird primaries" were conducted separate and apart from the Democratic party or the state and amounted to a "straw vote."

Minton said the Supreme Court has power to redress a law under the 15th Amendment "only if the wrong is done by the state."

The high court again put off its decision on the legality of racial segregation in public schools and whether to grant a review to Julius and Ethel Rosenberg, convicted atomic spies.

Lifts 50-Year Barrier

BY STAFF CORRESPONDENT

WASHINGTON — With one dissenting vote, the Supreme Court of the United States held here Monday that the Fort Bend Jaybird party primaries had stripped the Negro of an effective vote in the county for 50 years, and it reversed a decision by the Circuit Court of Appeals, rendered by Judge J. C. Hutcheson, and sustained the decision by the District court, rendered by Judge T. M. Kennerly, voiding the primary bar.

The brick used by the Jaybird Primary was simple but very effective in barring Negroes. The statutes of Texas govern county organizations that are not larger than the county in size or in reach.

The Jaybird primary compiled in every way with the statutory provisions for county organizations, except that instead of following the statute and voting in the July and August primaries, it held its primaries in May and June.

This Jaybird party permitted only whites to vote, and they elected the only candidate that would get on the July Democratic primary. Negroes could vote in July, but, of course, they would be voting for the one candidate for every office, which had been determined in the Jaybird primary the month before.

* * *

Thus the Democratic primaries in July and August, as well as the general election in the fall, merely ratified the election that had taken place in the Jaybird primary in May and June.

Attorney J. Edwin Smith, representing five Negro citizens of Fort Bend County, John Terry, J. C. Byars, A. P. Pinky Jr., and Charles Robert and Price Jackson, Jr. against the Jaybird party, forced them to open up the party and let Negroes vote.

KENNERLY VS. HUTCHERSON

Judge T. M. Kennerly of the United States District Court found that the Jaybird party came under the statutes governing parties in Texas, and that they tried to get away from it by violating the provision setting the dates for primaries, but that one could not gain any benefit by violating a law and ruled that they should open the party to Negroes.

There was considerable sentinent in favor of accepting Judge Kennerly's decision, but a few of he die-hards decided to appeal the ase, and to deny Negroes the right o vote in the primary that followed very soon after the decision f Judge Kennerly.

When the case was carried to the Circuit Court of Appeals, Judge J. C. Hutchson, an able lawyer with a good mind, rendered an opinion for the court in which he virtually held that the Jaybird party was a private party and not a statutory political party.

Judge Hutcheson made this decision on the same law and facts that had been presented to Judge Kennerly, and on the same law and facts that were presented to the Supreme Court, which reversed the decision.

FLAYS JAYBIRDS AND HUTCHESON

The Supreme Court in its opinion flayed state officials for permitting the Jaybirds to hold such an election, and said that they were guilty of permitting flagrant abuse of the process of election prescribed by statute in order to defeat the 15th Amendment, which prohibits interference with the right to vote.

But this flaying of the state officials was also an indirect lashing of Judge J. C. Hutcheson of the Circuit Court of Appeals, who had rendered the opinion sustaining action of the state as well as the action of the Jaybird Association.

Judge Hutcheson's opinion for the Circuit Court of Appeals seemed most strained to many lawyers, and entirely out of context and consonance with the Circuit Court of Appeal's own decision in the Perry case in Marshall, and with the Supreme Court's decision in the South Carolina case, where they had repealed all of the statutes.

SMITH VINDICATED

After Judge Hutcheson rendered his peculiar decision, there were Negroes in Fort Bend County, and some of the NAACP on the state level, who wanted to switch lawyers. To

prevent the embarrassment and the injustice to J. Edwin Smith, who had done such a valiant job in the lower court, rather strong representations had to be made to prevent this movement to oust Mr. Smith from the case.

The Supreme Court's decision Monday was a complete endorsement of Mr. Smith's position in the lower court, in the Circuit Court of Appeals, and in the United States Supreme Court; and a vindication of his logic, his courage and his good judgment, as well as his loyalty to the suit.

Incidentally, it may now be pointed out that very strong rumors came out here, after the case was argued before the Supreme Court. that the lawyer that was put into the case by those who were trying to make changes did the case absolutely no good.

So it was the little mite, Attorney J. Edwin Smith, who first attacted the dragon of the Jaybird Primary in its lair and den, and it has been he who has fought it at every stage until it has at least been completely destroyed.

As soon as the Court's mandate comes to the District court, proper orders will be put in to destroy the Jaybird primary, and to endow again the Negroes of Fort Bend with their inalienable right to vote IN ALL ELECTIONS.
in all elections.

Along with credit for J. Edwin Smith goes credit for those intrepid souls who had the courage to bring the suit and to stand by it, despite the fact that there were many very strong whites who disapproved of the suit's being brought and carried on.

High Court Outlaws Bar To Voting

WASHINGTON — The U. S. Supreme Court is expected to hand down its decision in the controversial school segregation cases on May 18, the Argus was informed this week.

There is, however, no indication on how the Court will rule on the matter which could strike at the very life line of segregation throughout the United States.

On last Monday, the Court outlawed the white Texas primary in a 7 to 1 ruling. With Justice Sherman Minton, the lone dissenter, the Court held that local election procedures in Fort Bend County, Texas, are an unconstitutional device to keep Negroes from voting.

FIVE CASES

On the question of schools, the Court has before it five separate cases, all brought by the National Association for the Advancement of Colored People.

Never in the history of civil rights fights before the Supreme Court, has more interest been stirred than in this question of the desegregation of the nation's schools.

In South Carolina, Governor James Byrnes declared that he would close the public schools and lease them to private enterprise if the Court held segregation illegal. In Georgia, Gov. Herman Talmadge said as long as he remained governor of the state, colored and white children would not attend schools in the same classrooms.

MAGAZINE INTEREST

Various national magazines have studied the problem that would face the south in the event the NAACP emerged victorious in their cases. Such outstanding southern liberals as Hodding Carter and Ralph McGill have written pieces pointing out the challenge of such a ruling.

In the case of last Monday's ruling, Justice Hugo Black spoke for the court in an opinion joined only by Justices William O. Douglas and Harold H. Burton. However, Chief Justice Fred M. Vinson concurred in the result in a separate opinion.

FRANKFURTER DIFFERS

Justice Felix Frankfurter wrote a separate opinion which he did not identify as either a dissent or a concurrence.

The ruling was against officers of the Jaybird Democratic Association of Fort Bend county. The suit was brought by five Negroes who argued the association devised voting procedures which continue to keep the ballot from Negroes, even though the Court ruled several years ago that Negroes have a constitutional right to vote in primary elections.

Since 1889, the association has conducted preliminary run-off primaries for county and precinct offices in advance of the regular Democratic primary and general election.

Jaybird Democrats' Action Outlawed

Supreme Court Rules 'Closed' Texas Primary Slate Illegal

WASHINGTON—The Supreme Court held Monday that Negroes in Texas were illegally deprived of their voting rights.

In a history-making decision the Court decided 8 to 1 that advanced primary elections conducted by a private organization of Democrats violated the Fifteenth Amendment to the Constitution which prohibits Federal and state governments from denying the right to vote because of "race, color or previous condition of servitude."

The Jaybird Democratic Association of Fort Bend County, Texas, was involved in the case.

Jaybird, a private organization, barred Negroes but all of the big shot white Democrats belonged to it. They would set up a pre-primary slate of endorsements for political candidates, hand it over to the regular organization and candidates named by Jaybird were put on the Democrat ballot as regular party candidates.

Everybody in the South knows that a winner in a Democratic primary is usually elected to office.

However, Negroes voted in the regular Texas primary so the pre-primary Jaybird gimmick was, in effect, denying the Negro citizen a choice and therefore a "right" to vote.

The Supreme Court ruled several years ago that the Democratic party of Texas violated the Constitution by excluding Negroes from voting in the regular party primaries.

At that time Texans, determined to defy the decision, set up "pre-primary clubs" such as Jaybird. The Court said Monday: "It is apparent that Jaybird activities follow a plan purposefully designed to exclude Negroes from voting and at the same time to escape the Fifteenth Amendment's command that the right of citizens to vote shall neither be denied nor abridged on account of race.

"Clearly, the Amendment includes any election in which public issues are decided or public officials elected. Just as clearly the Fifteenth Amendment excludes social or business clubs.

"For a state to permit such a duplication of its election processes is to permit a flagrant abuse of those pre... to defeat the purposes of the Fifteenth Amendment. The use of a county-operated prim... to ratify the result of the prohibited election merely com... offense." The Court termed the Jaybird election a ... straw poll designed to determine how the county's white voters felt, and that the colored voters actually was casting an empty vote after the real decisions were made.

Court Ruling Gets Quick Reaction in Capital

By Thomas Winship
Post Reporter

District Commissioner F. Joseph Donohue yesterday urged two moves to reverse the Court of Appeals 5-to-4 decision that held invalid the District's 1872-1873 restaurant anti-segregation laws.

Donohue urged his two fellow commissioners to:

1. Appeal to the Supreme Court for a review of the decision.

2. Reenact the old laws by a Commissioners' regulation. Judge E. Barrett Prettyman had held in effect that the laws had become invalid through disuse. Donohue's hope was to enact and enforce the regulation and pick up a fifth vote against segregation from Prettyman if it should be challenged in court as the old laws had been.

No action was taken on either proposal yesterday because Commissioner Renah F. Camalier was absent.

Camalier said later he thought the regulation should wait until the Supreme Court had ruled. He added that he couldn't decide whether the decision should be appealed until he had read it.

At the Capitol, Senate Majority Leader Robert A. Taft (R-Ohio) stuck to his position that an elected city council could deal with the segregation question.

Taking issue with the majority decision, Taft said Congress could delegate almost any kind of power to a District city council, "so long as Congress retains its right to amend council actions."

Donohue's idea on the regulation was to start from scratch with a regulation that the city would enforce and which almost certainly would be taken to court. He said he couldn't tell how Prettyman would rule on its constitutionality. "But at least we would have eliminated the question of disuse," he added. Prettyman did not rule on the constitutionality of the old law.

Donohue proposed that the regulation state the city could revoke the license of any restaurant that failed to serve well behaved [illegible]. He said he thought the Commissioners had such authority under their general police powers.

Corporation Counsel Vernon E. West in asking an immediate appeal to the Supreme Court said the city would be severely criticized if it did not. Donohue agreed an appeal should be made and said he already had received numerous phone calls and telegrams requesting an appeal.

Engineer Commissioner Louis W. Prentiss, who has been on the job only three weeks and wasn't familiar with the case, asked that decisions on the appeal and the regulation be postponed until Camalier had stated his views.

Sen. Wayne Morse (Ind.-Oreg.) took a quite different view. The former dean of Oregon State School of Law commented: "It always has been my opinion that under the Constiuttion it is the clear duty of Congress to bring to an end by appropriate legislation second class citizenship in the United States. One of Congress' first steps should be to pass legislation to end all regregation in the Nation's Capitol." Morse last week filed a bill to do just that.

Senate District Committee Chairman Francis Case (R-S. Dak.) took a more cautious position, stating that the decision serves to "sharpen the picture on powers Congress may delegate. We shall study it carefully."

Elmer W. Henderson, director, American Council on Human Rights, issued a statement calling the decision "extremely unfortunate . . . A judicial affirmation of the principles of racial segregation can only give comfort to our enemies. We hope the District of Columbia will appeal the decision to the United States Supreme Court."

Mrs. Mary Church Terrell, chairman, Coordinating Committee for Enforcement of the D. C. Anti-Discrimination Laws, a complainant in the Thompson's Restaurant case, said the decision is "far-reaching in the mischief it commits." She said it "declares that municipalities may pass 'Jim Crow' laws with full authority; that such laws 'preserve peace and good order' but may not pass antisegregation laws since such laws' cannot be justified as in aid of the preservation of peace and order."

Furthermore, Mrs. Terrell said, the ruling "casts serious doubt on the power of Congress to establish home rule in the District of Columbia since it questions the right of Congress to delegate any authority."

Taft, in his comment on the court ruling, said: "I don't believe for a minute that Congress can't delegate such authority." He referred to the question of how much authority Congress can delegate to a District City Council.

"There must have been some defect in the law creating the old legislative assembly," said Taft. He added:

"The whole theory behind pending home rule bills is that Congress could delegate any authority it wants to for governing the District of Columbia; that is, so long as Congress can amend council actions."

The GOP majority leader said that from what he knows of the restaurant case ruling, it did not shake him from his earlier statement on the segregation issue.

Ten days ago Senator Taft told reporters: "I always have believed that the segregation question should be handled by Washington home rule. In this way the problems of segregation would be determined by the elected officers of the people."

During his bid for the presidency last Spring, Taft advocated elimination of segregation in the District.

12d 1953

Washington, D.C. (RESTAURANTS)

Court Rules Restaurants Can Refuse Negro Diners

5-to-4 Decision Holds 'Lost Laws' Of 1872 and 1873 Can't Be Enforced

By Don Olesen
Post Reporter

In a 5-to-4 decision, the United States Court of Appeals ruled yesterday that restaurants here can legally refuse to serve Negro customers.

The five judges said that the so-called "lost" city laws of 1872 and 1873 cannot be enforced. The ruling held restaurants must serve any well-behaved and respectable person.

Corporation Counsel Vernon E. West urged an immediate appeal to the Supreme Court and District Commissioner F. Joseph Donohue concurred, but a decision was put off until the next meeting of the Commissioners.

Reenactment Proposed

Donohue also suggested that that the Commissioners reenact the 1873 law as a Commissioners' regulation to eliminate the argument that the law has died because of the lack of use. If the appeal is filed soon, the high tribunal probably could hear it before its present term ends in June.

Chief Judge Harold M. Stephens announced the court's ruling and Judges Bennett Champ Clark, Wilbur M. Miller and James M. Procter concurred.

They said the "lost" laws were invalid because they were "general," not "municipal," and that they were repealed in 1901, anyway.

In a separate opinion, Judge E. Barrett Prettyman reached the same conclusion, via different reasoning. His was the deciding vote.

Agrees With Stephens

Judge Prettyman agreed with Judge Stephens that if the laws were general legislation—not local ordinances—"they were void from the beginning and in any event were repealed by the 1901 code." If they were municipal ordinances, Judge Prettyman added, "they were long ago abandoned by the regulatory authority which originally adopted them."

He did not rule on "whether the enactments were legislation or were regulatory municipal ordinances."

Judge Charles Fahy spoke for the minority, and Judges Henry W. Edgerton, David L. Bazelon, and George T. Washington joined him.

Both laws "were valid when enacted by the Legislative Assembly, have not been repealed and are in effect," the minority declared.

A ruling from the full nine-member court had been awaited since January 7, 1952.

At stake was the District's charge that Thompson's Restaurant, 725 14th st. nw., refused to serve three "well-behaved and respectable" Negroes because of their race and color.

Judge Stephens advanced these two principal arguments in giving his majority view:

1. The 1872 and 1873 laws—passed by the District's Legislative Assembly—"were not acts . . . relating to municipal affairs." Congress limited the Assembly to passage of purely local laws. Further, "Congress could not constitutionally delegate" such authority to the Assembly, the opinion said.

2. The two disputed acts "were repealed by the District of Columbia Code of 1901."

To Judge Stephens' arguments, Judge Prettyman added a third of his own, and rested his opinion on it. He did not rule on the Assembly's right to pass the two laws—the Constitutional issue involved.

The laws "are presently unenforceable," he said, because after passage they were "neither mentioned again nor enforced for a period of 75 years." Thus the laws "must be deemed by the courts to have been abandoned," Judge Prettyman said.

For Congress to Determine

Both Prettyman and Stephens declined to pass "on the wisdom of the policy" reflected in the anti-segregation laws. They said that was for Congress, not judges, to determine.

The strong minority opinion took up 20 of the ruling's 61 pages.

Congress, "could constitutionally delegate to the Legislative Assembly power to enact regulations of a municipal or local character," Judge Fahy wrote, and the 1872 and 1873 laws "regulate a local activity."

Further, he declared, "the regulations have not been repealed." The District Code of 1901 expressly exempted them from repeal, Judge Fahy held.

He concluded: "Neither time nor neglect should bar the legislative application to licensed restaurants in this community of the principle which opposes discrimination on account of race or color."

The two "lost laws" in question were enacted by the Assembly, a sort of "city council" set up by Congress in 1871 to run Washington. The Assembly was abolished three years later.

Neither law can be found in any official or unofficial District code book published since 1901.

Forfeiture Provided For

The 1872 law declares, in part, that "any restaurant, hotel, ice cream saloon or soda fountain barbershop or bathinghouse keepers, or proprietors, who refuse under any pretext to serve any well-behaved, respectable person, in the same roo mand at person, in the same room and at behaved and respectable persons" would be fined $100 and forfeit his business license.

The 1873 law required that "the proprietor or proprietors, keeper or keepers, of any licensed restaurant, eating-house, bar-room, sample-room, ice-cream saloon, or soda-fountain room shall sell at and for the usual or common prices . . . to any well-behaved and respectable person who may desire the same, or any part or parts thereof, and serve the same to such person or persons in the same room or rooms in which any other well-behaved person or persons may be served or allowed to eat or drink in said place or establishment."

A report by the National Committee on Segregation in the Nation's Capital uncovered the "lost" laws in 1948. The Thompson's Restaurant case was developed by the District as a "test" to determine whether the laws remained valid.

In Municipal Court, Judge Frank H. Myers threw out the District's four charges against the restaurant, and said the two statutes "have been repealed by implication." The District appealed.

Then the Municipal Court of Appeals, in a split decision, upheld the 1873 law but ruled out the 1872 statute. The restaurant then appealed to the Federal Appeals Court.

Were these laws "within the power of the Legislative Assembly?" Judge Stephens took 20 pages to answer that one.

His majority opinion pointed out that Article I of the Constitution gives Congress full power "to exercise exclusive Legislation in all cases whatsoever," over the District.

In turn, he said, the Congressional act setting up the Assembly provided that its power "shall extend to all rightful subjects of legislation within said District, consistent with the Constitution. . . ."

Judge Stephens then turned to nine previous court rulings which he said backed his "conclusion that the enactments of the Legislative Assembly of 1872 and 1873 which are under question in the instant case were of the character of "general legislation," the power to enact which the Congress could not constitutionally, and did not, delegate to the Legislative Assembly."

Here are the nine cases, with summaries of the issue and ruling involved as reported in Judge Stephen's opinion.

Stoutenburgh versus Hennick, decided by the Supreme Court in 1889: At issue was an act of the Assembly requiring "commercial agents" in the District to obtain licenses before operating here. Judge Stephens said the opinion declared the law was not municipal but "a regulation of interstate commerce," and hence void.

Metropolitan Railroad vs. District of Columbia, decided by the Supreme Court in 1889: At issue was the question of whether the District was a "municipal body" subject to the statute of limitations, or, as the District contended, "identified with the sovereignty of the United States" so as to be entitled to the exemptions of sovereignty. The high court held that "the sovereign power of this qualified State (the District) is not lodged in the corporation of the District of Columbia, but in the Government of the United States. Its supreme legislative body is Congress."

District of Columbia vs. Saville, decided by the Supreme Court of the District in 1874: At issue, an Assembly act forbidding theater proprietors from selling reserved seat tickets after a performance opened when such seats had not been reserved previous to the opening. The court held the law was "an unwise, xexations and unlawful interference with the rights of private property," and "has nothing whatever of the character of a police regulation."

Roach vs. Van Riswick, decided by the same court in 1879: At issue was validity of an Assembly act making court judgments a lien on equitable interests in land. The court held only Congress was competent to pass such legislation and added that "municipal regulation of the internal economy of a town is universally recognized as something distinct from the exercise of legislation." It also noted existing of a "dividing line" between legislative and "strictly municipal" powers.

Smith vs. Olcott, decided by the United States Court of Appeals here in 1901: At issue, an Assembly law fixing fees and commissions for auctioneers. The court found the law invalid and sai dit was not "a mere local regulation" of municipal scope "but an attempt at the exercise of a general legislative power over the freedom of contracts."

Coughlin vs. District of Columbia, decided by the same court in 1892! At issue, a regulation by the District Commissioners requiring owners of land fronting on paved sidewalks to remove snow or ice there. The court said that although municipalities are usually vested with quasi-legislative powers, "it is not to be inferred that similar powers exist in the Commissioners . . . ." The regulation in question, it thought, amounted to "the levying of a tax in the way of enforced labor," hence was legislation.

United States ex rel. Daly V. MacFarland, decided by the United States Court of Appeals here in 1907: Congress had given the Commissioners power to make plumbing regulations and provided that violators could be fined. The Commissioners added an additional penalty revoking licenses of violators. The court held they didn't have the power, that such revocation amounted to forfeiture of property, and that such power must be "expressly conferrd" by th legislature.

Johnson vs. District of Columbia, decided by the same court in 1908. Here the court held that a Legislative Assembly act penalizing for cruelty to animals was "mere police regulation" and 'pre-eminently one for local municipal regulation."

United States vs. Cella, United States Court of Appeals for District, 1911: The issue was whether a Congressional law prohibiting "bucket shops"—fake stock brokerage houses—here should be prosecuted in the name of the District o rin the name of the United States. The court held prosecution should properly be in the name of the United States because, "while the statute is local in its application, it deals with a subject-matter general in character" and beyond municipal regulation.

Judge Stephens said that the court rulings included in his opinion—"which for this court are authoritative—clearly require the conclusion that the enactments of the Legislative Assembly of 1872 and 1873 which are under question in the instant case were of the character of general legislation," the power to enact which the Congress could not constitutionally, and did not, delegate to the Legislative Assembly."

View of Enactments

The two enactments, he said, "limit the freedom of the restaurant keeper in the use of his property, in the exercise of his power to contract, and in the carrying on of a lawful calling . . . The enactments lift restaurant keeping theretofore strictly

a private enterprise, to the level of a 'public employment'—thereby altering the common law which required inns, but not restaurants, to serve all travelers.

"The enactments do not relate, in the usual sense of the terms, to the promotion or protection of the public morals and decency, the securing of the public safety against fires, explosions, riot and disorder, or other dangers to life and limb," or to perservation of the public peace and order and public health, Judge Stephens wrote.

He declared that "the enactments are in the nature of civil rights legislation," and attempt "to enforce that policy by a fine and licensed forfeiture."

"Finally," the judge declared, "the enactments, though applicable only in the District of Columbia, are, because they are applicable in the Nation's capital, of national interest.

'General Legislation'

"In view of the purpose and effect of the enactments as above described, we think that no other conclusion can reasonable be reached than that they were of the character of general legislation, the power to enact which the Congress could not constitutionally delegate to the Assembly."

Judge Stephens referred to a number of "so-called Jim Crow cases" which he said "uphold, as within the bounds of municipal powers, ordinances requiring segregation of the white and colored races."

He added: "We think such cases distinguishable from the instant case because in such cases the ordinances were in accord with a local custom of racial segregation . . . and were held valid upon the theory that they were for the purpose of preserving peace and good order which would likely be interfered with by racial association.

"Ordinances in aid of the preservation of peace and order are indisputably within municipal power. The enactments involved in the instant case were in conflict with local custom in respect of race association and cannot therefore be justified as in aid of the preservation of peace and order."

View on 1901 Repealer

Judge Stephens then went to the opinion's second major point—that the two acts were repealed by the District Code of 1901.

The code repealed all Assembly acts except those relating to "police regulations and generally all acts and parts of acts relating to municipal affairs only."

"That exception did not save the Assembly enactments of 1872 and 1873," Judge Stephens wrote, because they were neither police regulations nor municipal in character.

One further clause in the 1901 act exempted from repeal "all penal statutes authorizing punishment by fine only . . ." But Stephens said he thought it "clear that the license forfeiture provisions" of the two acts "are in the nature of penalties."

In concurring, but for a different reason, Judge Prettyman said: "If the enactments constituted legislation they were invalid when enacted by the Legislative Assembly, being beyond the power permitted a municipal body in the District of Columbia by the Constitution; and, furthermore, even if valid when enacted they were repealed by the express provision of the 1901 Code."

They he went to his main point: "It seems to me that a regulatory condition imposed upon a business license, originally prescribed by a municipal licensing authority in 1872 and 1873 but neither mentioned again nor enforced for a period of 75 years, despite the interim promulgation of apparently complete regulations and the issuance of thousands of licenses during that period, must be deemed by the courts to have been abandoned by the licensing authority."

"No Text or Record"

He pointed out that "no prosecution under these enactments has been attempted since 1872," that no official "text or record of their passage exists."

He said he was aware "that a statute is not repealed by disuse," but declared "that principle (that a statute lives in full force despite non-use) rests upon the proposition that the executive branch of government cannot nullify an act of the legislative branch by failure to enforce, any more than it can effect a repeal by direct fiat. Our present consideration does not involve that proposition."

"Thus the failure to restate and to enforce the 1872-73 conditions was by an official body which had power to do just that. Executive disuse of a legislative enactment is not involved. What is involved is disuse by a licensing authority of its own regulations," Judge Stephens declared.

"If there be such a thing as a combination of time and circumstances which spell the abandonment of a regulation by the municipal authority which once promulgated it, this is it," he added.

He felt "we are not to determine what the law ought to be. That is for the Congres, not for the courts . . . The judicial branch of government cannot impose either segregation or non-segregation upon licensed restaurants."

In writing the minority opinion, Judge Fahy promptly tackled his thesis that the two laws "were valid when enacted by the Legislative Assembly, have not been repealed and are in effect."

First, he said, "there can be no question Congress could Constitutionally delegate to the Legislative Assembly power to enact regulations of a municipal or local character."

"If, therefore, enactment of the equal service provisions was 'local slef-government' they are valid. We think htis is the case. They regulate a local activity, the serving of food at a fixed location within the District. This is the sort of thing which in the several States, unless there is State-wide law ot the contrary, is appropriately left to municipal authority."

Judge Fahy pointed out there are "many local ordinances which require segregation on account of race or color and many others which prohibit discrimination on such basis."

Then he wrote: "The opinion of Judge Stephens to the effect that the provisions now in question nevertheless are general legislation beyond the competence of the Legislative Assembly lacks the adherence of a majority of this court.

"Our four brothers who subscribe to that view recognize that the so-called 'Jim Crow Cases' upheld as within the bounds of municipal power ordinances requiring segregation. They say those ordinances accorded with local custom, that accordingly, they were for the purpose of preserving peace and order, and that this brought them indisputably within municipal power.

"This we think erroneous," Judge Fahy declared.

"The definition and punishment of serious crimes, for example, is not within municipal authority because one of the purposes of the criminal law is to preserve peace and good order. Such a purpose is quite appropriate for municipal attention but it does not make legislation municipal."

On this point, Judge Fahy concluded: "There is no doctrine known to the law that validity or invalidity of legislation rests upon whether or not it conforms with prevailing custom."

Attacking Judge Stephens' contention that the two "lost" laws were repealed in 1901, Judge Fahy declared the 1901 Code expressly exempted "police regulations, and generally all acts and parts of acts relating to municipal affairs only." And the 1872-73 laws "are regulations o fa local or municipal character validly enacted by the Legislative Assambly," Judge Fahy said.

He declared that "the courts have consistently recognized the continuing validity of acts of the Legislative Assembly unless expressly superseded."

Turning to Judge Prettyman's argument, Judge Fahy said he was "aware of no doctrine of implied repeal by executive abandonment. No precedent is adduced for any such doctrine Non-use does not repeal."

Then he considered Judge Prettyman's argument that the District had promulgated "apparently complete regulations' regarding restaurants, "but omitted the 1873 provisions, thus abandoning them."